

(28,335)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 380.

HENRY HUNSICKER, CHARLES J. GREENE, JR., PRODUCERS OIL COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

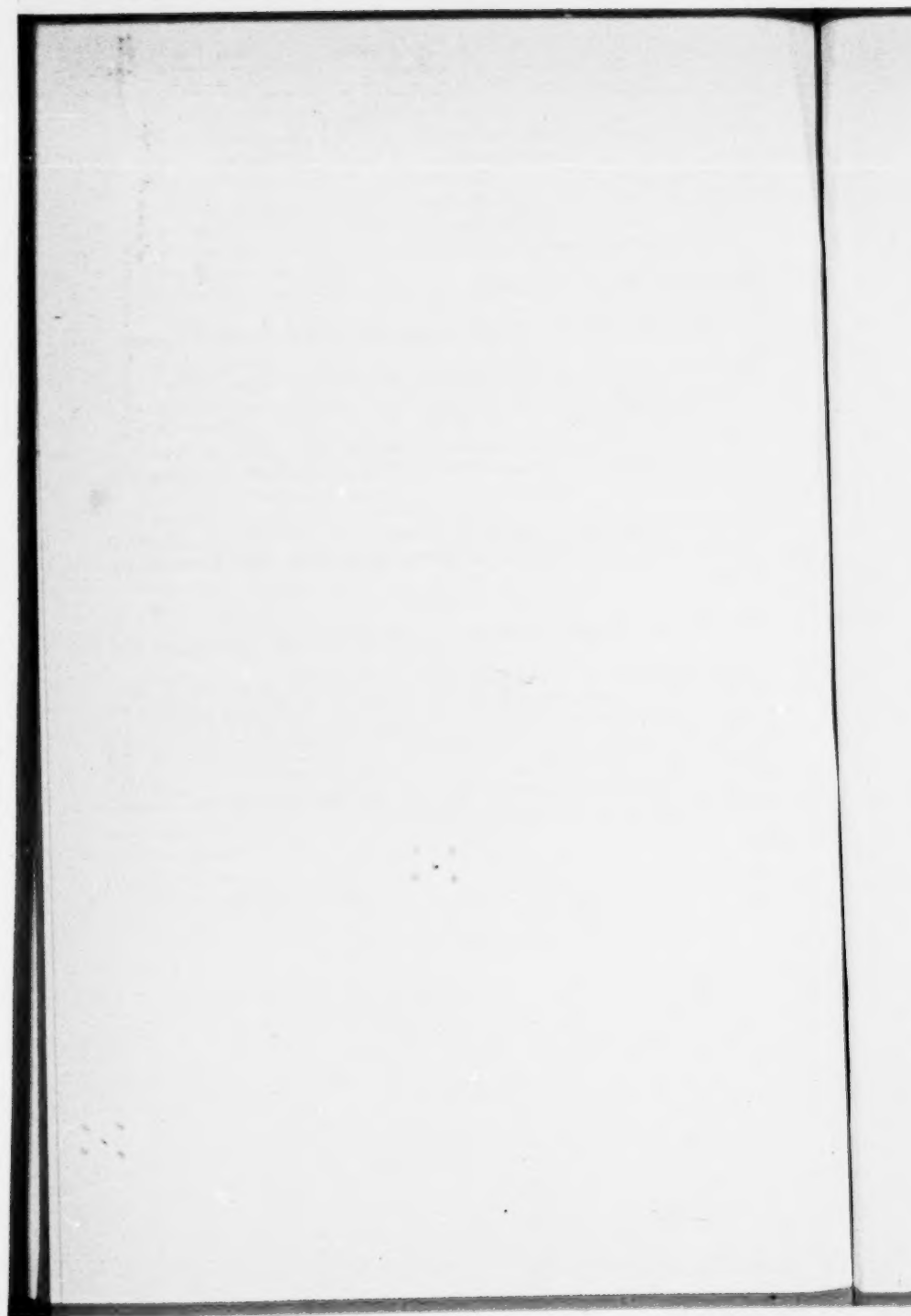
Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

HENRY HUNSICKER, CHARLES J. GREENE, JR., PRODUCERS OIL COMPANY, and The Texas Company, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3542, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,
Plaintiff,
versus No. 1156, In Equity.

HENRY HUNSICKER, ET AL.,
Defendants.

Transcript of Appeal taken by the Defendants, and
Cross Appeal taken by the Plaintiff, to the United
States Circuit Court of Appeals, Fifth Circuit.

New Orleans, Louisiana.

In the District Court of the United States for the
Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1156, In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers
Oil Company, The Texas Company, Defendants.

To the Honorable, the Judge of the District Court of
the United States for the Western District of
Louisiana, sitting within and for the Shreveport
Division of said District:

The United States of America, by its Solicitor, Robert
A. Hunter, Special Assistant to the Attorney General,
acting herein under the direction and by the authority
of the Attorney General of the United States, brings

this Bill of Complaint against Henry Hunsicker, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division; Charles J. Greene, Jr., a citizen of Louisiana, and a resident of the City of Natchitoches, in the Western District of Louisiana, Shreveport Division, and Producers Oil Company and the Texas Company, corporations, organized under the laws of the State of Texas, domiciled in the City of Houston, in the Southern District of said State, said corporations doing business in the City of Shreveport, Western District of Louisiana, with Hampden Story, a resident of the City of Shreveport, Louisiana, as their duly authorized agent for the service of process, and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land which was then, in part, unsurveyed public land of the United States, but all of which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lots Two (2) and Three (3) of Section Eight (8), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and Ex-Officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and, likewise, of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1906, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, withdrew from settlement and entry and all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the Act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public Lands in certain cases," ratified, confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of the Petroleum Reserve Number Four.

2 That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to

location or entry, of any kind, under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph 1 hereof, for the purpose of drilling thereon for oil and gas, and did so drill two wells, known as Hunsicker Nos. 1 and 2, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was, in fact, made prior to said orders of withdrawal, nor until long after said orders were issued and had become effective to withdraw said land from location, entry, and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas so withdrawn from the said tract of land, as above set forth, were extracted therefrom under color of a

To all whom it may concern: Notice is hereby given that the undersigned citizen of the United States in the State of Louisiana, and having complied with Chapter VI., Title 32, of the Revised Statutes of the United States, and extended by Act of Congress approved February 11th, 1897, entitled "An Act to authorize the entry and patenting of lands containing petroleum, or other mineral oils under the placer mining laws of the United States," have filed location on.....placer mining claims of 20 acres each, situated in Caddo Parish, State of Louisiana, and described as follows:

Fractional SW $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 8, T. 20 N. R. 16 W., La. M. Fractl. NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 8, T. 20 N. R. 16 W. La. M., the same being claims..... and designated on the United States Survey as United States land, being in all 20 acres.

Discovered190...

Located March 20, 1910.

Signed: HENRY HUNSICKER,
Locator.

C. J. GREENE, JR.

3 C. J. Greene, Jr.,
 to Notice of Location.
 The Public.

To all whom it may concern: Notice is hereby given that the undersigned citizen of the United States in the State of Louisiana, and having complied with Chapter VI., Title 32, of the Revised Statutes of the United States, and extended by Act of Congress approved February, 11th, 1897, entitled "An Act to authorize the entry and patenting of lands containing petroleum, or other mineral oils under the placer mining laws of the United States," have filed location on.....placer mining claims of 20 acres each, situated in Caddo Parish, State of Louisiana, and described as follows:

Fractional SW $\frac{1}{4}$ of NE $\frac{1}{4}$ Section 8, T. 20 N. R. 16 W., La. M., the same being claims.....and designated on the United States Survey as United States land, being in all 20 acres.

Discovered190...

Located March 20, 1910.

Signed: C. J. GREENE, JR.,
 Locator.

Attest:

HENRY HUNSICKER.

The said above pretended locators themselves made no effort to explore said land or to drill for oil, but on the 28th day of March, 1910, by act recorded in Conveyance Book 67, page 621 and 622, of the records of Caddo Parish, Louisiana, executed a mineral lease thereon to the Producers Oil Company, defendant herein.

Plaintiff avers that the said defendants have no right,

title or interest in and to the said tract of land, but acting under the said pretended and illegal mineral location and lease, and not otherwise and subsequent to the withdrawal orders hereinabove referred to, the said defendant, Producers Oil Company, entered upon the said tract of land, drilled wells thereon, as aforesaid, and took therefrom a large quantity of oil and gas which it marketed and sold to defendant, the Texas Company, the said above named locators, Henry Hunsicker and Charles J. Greene, Jr., defendants, receiving a royalty therefrom, the amount and value of which oil and gas so withdrawn, as well as the amount of the royalty so paid, being unknown to plaintiff.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought herein.

VI.

Plaintiff avers that the said defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of plaintiff.

VII.

Plaintiff avers that the value of the said land and the oil and gas taken therefrom exceeds the sum of Forty Thousand (\$40,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location and lease set forth in paragraph 5 of this bill be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the defendants, or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this suit, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to same, or to any of the oil, gas, or other minerals on or under the same, or from going upon said land or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land used for the purpose of drilling and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land, and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. May it please the Court that writs of subpoena issue directed to the said Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company and the Texas Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises, and as shall be meet and agreeable to equity.

9. That plaintiff may have such other and further relief as may seem just to this Honorable Court, and agreeable to equity and good conscience.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

5

Affidavit.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing Bill of Complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

LYLE S. MORRIS,
Deputy Clerk United States District Court,
Northern District of California.

Indorsed:—Bill of Complaint. Filed July 19, 1917.

To the Honorable, the Judge of the District Court of
the United States for the Western District of
Louisiana, Sitting Within and for the Shreveport
Division of said District:

I.

But defendant shows that the aforesaid survey, in so far as it related to the above described property, is illegal, null and void; and that in making and approv-

ing said survey as to said land the Commissioner of the General Land Office acted beyond his power, jurisdiction, right or authority, inasmuch as the said land at the date of the said purported resurvey was not public land of the United States subject to survey, but was, and still is, in the full equitable ownership of the defendants as mineral locators, as will hereinafter specifically be shown.

7

II.

It is specifically denied that the withdrawal order of December 15th, 1908, referred to in the second article of the bill of complaint, included the lands herein involved, and specially is it averred that if the said withdrawal order should be construed to include the land herein involved that the said withdrawal order did not, nor did it purport to, withdraw the said land from location and purchase under the mining laws of the United States.

It is admitted that on the second day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, issued a proclamation, ratifying, confirming and continuing in full force and effect the previous order of withdrawal of December 15th, 1908; but, as aforesaid, it is denied that the said previous withdrawal included the land herein involved, or that if it did include the land herein involved that it affected the right of any citizen to locate and purchase the same under the mining laws of the United States.

It is admitted that neither of said orders of withdrawal has ever been vacated but, as aforesaid, it is denied that either of said withdrawals, effect the land involved in this suit; and it is specially reiterated that the withdrawal order of December 15, 1908, did not,

nor did it purport to, withdraw the said land, if it should be held to be included in the withdrawal order, from location under the placer mining laws of the United States or purchase under said laws; but it is averred that the said land remained thereafter free and open to exploration for oil, gas and other minerals and to location and purchase under the said mineral laws.

III.

Defendant denies that in violation of said order of withdrawal and in violation of the rights of the plaintiff, or contrary to its laws, or without any valid title, lawful right or authority, or in bad faith, that he entered upon and took possession of the property involved in this suit, for the purpose of drilling thereon for oil

and gas. But defendant shows that, as herein-
 8 after specifically set forth, his entry upon the said property was legal and valid and under the direct authority of the mining laws of the United States, permitting the location, exploration and purchase of lands containing oil or gas, and under and by virtue of a valid location thereof, under which location the wells referred to in this article of the bill of complaint were drilled, the drilling of which wells was under the authority of the said mining laws and not to the injury of the plaintiff.

IV.

Defendant admits that on and prior to December 15th, 1908, he was not in possession of the said land; but defendant specially shows that prior to July 2nd, 1910, as hereinafter more fully appears, he, through his lessee, the Producers Oil Company, was in the actual possession of said land as a bona fide occupant

thereof, in diligent prosecution of work thereon, leading to a discovery of oil and gas; and that such discovery was in fact made prior to the withdrawal order of July 2nd, 1910.

V.

Defendant shows that on the 20th day of March, 1910, he made a location under the mining laws of the United States of fractional SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and of fractional NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 8, Township 20 North, Range 16 West, La. M., the same being vacant surveyed lands of the United States; and that notices of location were on that date posted upon the said land, of which defendant on that date took possession; and that on the 22nd day of March, 1910, notice of said location was filed for record in the conveyance records of Caddo Parish, Louisiana. That on that date the said land, being vacant land of the United States not withdrawn from location under the mining laws of the United States, was under said laws free and open to exploration, location and purchase; and that, availing himself of those laws, defendant, as a qualified citizen of the United States, made such valid location.

Defendant shows that being in actual possession of said property under said location and under the laws of the United States, and not being able financially to perform the actual work necessary to drilling wells for oil and gas thereon, the cost of which in the particular territory in which the said land is located being very high, he did on the 28th day of March, 1910, execute a valid mineral lease on said property in favor of the Producers Oil Company, which said lease was recorded in the records of Caddo Parish, Louisiana.

Defendant shows that under and by virtue of said lease and the said valid location, the Producers Oil Company entered upon the said tract of land, under possession given by him, and drilled wells thereon, from the proceeds of which wells it has paid to defendant some royalties, the amount and value of which will be more fully set forth in an amended answer, which the defendant reserves the right later to file.

Defendant shows that having taken possession of the said property through the said lessee, work was promptly and diligently begun, leading to a discovery of minerals, and that on the 20th day of June, 1910, gas was discovered thereon in paying quantities, thereby completing the location and investing this defendant with all the rights of a mineral locator under the laws of the United States, to-wit, with the full equitable title to the said property, and the right to purchase and patent, which patent has been denied in spite of his efforts to obtain the same, on account of the illegal construction placed upon the withdrawal orders above referred to by the officers of the United States Land Office.

V.

Defendant denies that he is an unlawful trespasser upon said land but avers that his possession thereof is legal and that he is the equitable owner of the said property, with the right to drill as many wells thereon as he deems proper, and to operate, sell and dispose of the oil and gas produced therefrom.

VIII.

Defendant, as aforesaid, specially denies that he acted in bad faith in the premises, but avers that all of his acts of possession and location were in good faith and

in allowance upon his rights under the mining laws of the United States.

Wherefore, having made a full and complete answer to all of the averments of the bill of complaint, defendant prays that the said bill be dismissed and that he be hence discharged with all costs in this behalf sustained.

THIGPEN & HEROLD,

Solicitor for Defendant,
Henry Hunsicker.

Indorsed:—Answer of Henry Hunsicker, Deft. Thigpen & Herold, Solicitors for Defendant, Hunsicker. Filed Aug. 10, 1917.

11 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1156, In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers
Oil Company, The Texas Company.

The answer of The Texas Company to the bill of complaint herein, and for answer thereto says:

I.

That, not denying, or admitting, any of the matters or things in said bill of complaint, excepting as they may have any materiality or pertinency to its defense herein, says, that it commenced to take oil from wells producing oil, drilled on the premises described in the lease of Henry Hunsicker and C. J. Greene, Jr., bearing date the 28th day of March, 1910, and particularly

referred to in Article V of plaintiff's bill of complaint, on or about the 26th day of May, 1911, and thereafter, from time to time, up to and including the 30th day of June, 1917; but defendant avers, that it is unable to state what part, or if any, of such oil was received into its pipe line from wells drilled on the property involved, and in dispute, in this cause. That the oil run into its said pipe line from wells on the lease of Henry Hunsicker and C. J. Greene, Jr., to Producers Oil Company, of date March 28, 1910, from or about May 26, 1911, to June 30, 1917, inclusive, amounted to ninety-eight thousand six hundred twenty-one and 10-100 (98,621.10) barrels of oil.

II.

Defendant avers, that on the 8th day of August, 1911, the said Producers Oil Company, said Henry Hunsicker and said C. J. Greene, Jr., defendants herein, executed a division order, or agreement, to this defendant, whereby and whereunder they declared that they were the owners of wells numbered from one (1) upward, drilled and producing oil on the said leased property, in Section Eight (8), Township Twenty (20) North, Range Sixteen (16) West, Parish of Caddo, State of Louisiana, and notifying this defendant to credit all such oil so received into its pipe line for transportation to their several accounts and credits, as follows, to-wit: Producers Oil Company, five-sixths (5-6); Chas. J. Greene, Jr., one-
 12 eighteenth (1-18), and Henry Hunsicker, two-
 eightieths (2-18), all of which was according-
 ly done by this defendant.

III.

That subsequently to such division order, the said Producers Oil Company, said Henry Hunsicker and

said C. J. Greene, Jr., authorized and directed, under sales orders, which will be exhibited on the hearing hereof, this defendant to sell and dispose of all oil as was run, from time to time, by them, and received by this defendant, into its pipe line for transportation, at the posted price for said oil, on dates of said sales, and likewise authorizing this defendant to become a purchaser thereof at the daily posted market price thereof, as received; that said oil (five-sixths thereof belonging to the Producers Oil Company), as was sold from time to time, as received and delivered into its pipe line for the prices as reflected by the daily posted market prices, which prices were the fair and reasonable price or prices, or value or values, of said oil at the time and when made as aforesaid, and as shown by bill of particulars hereto annexed, marked Exhibit "A." That the total oil from said lease run into its pipe line on various and divers occasions and dates, from the 26th day of May, 1911, up to and including the 30th day of June, 1917, amounts in the aggregate to ninety-eight thousand six hundred twenty-one and 10-100 (98,621.10) barrels of oil.

Of the proceeds of the sales of five-sixths (5-6) of such oil, as aforesaid, there was paid by this defendant to the Producers Oil Company, for its said five-sixths (5-6) of said oil, Sixty-four thousand five hundred eighty-four and 16-100 (\$64,584.16) Dollars, and that the balance of the said oil, to-wit: the two-eightieths (2-18) and one-eighteenth (1-18) of the royalty interest, respectively, of said Henry Hunsicker and C. J. Greene, Jr., amounting in the aggregate to sixteen thousand four hundred thirty-six and 87-100 (16,436.87) barrels of oil, is held in suspense by this defendant, for account of said Henry Hunsicker and said Charles J. Greene, Jr., excepting a small sum at one or more times paid to said Henry Hunsicker, all of which will be more

fully shown by a statement of such oil received in its pipe line, marked Exhibit "A," hereto annexed
 13 and made a part hereof, and to be further shown by the sales orders to be produced on the hearing hereof.

13

V.

Defendant further avers, that it accepted said oil as it was run into its pipe line from the lands under the lease of said Henry Hunsicker and said C. J. Greene, Jr., to the said Producers Oil Company, in good faith, and for the respective accounts of all parties to said lease, into its pipe line for transportation, and bought said five-sixths (5-6) of the same in good faith, believing, and as it still believes, that said Producers Oil Company is the lawful owner thereof.

VI.

Defendant further avers, that it does not know, and is not informed, which one of the well or wells drilled on said property is, or are, on the land, in controversy, but, that said oil so received from said Producers Oil Company, said Henry Hunsicker and said C. J. Greene, Jr., into its pipe line, was not received or taken into its pipe line from any particular, separate or distinct, or designated, well or wells, but that all of said oil was run from and taken from all wells drilled on said leased premises producing oil, from said leased premises, without reference to any particular or designated well, and that it is unable to state, with any degree of particularity or certainty, the amount of oil run from any, or from each, of the wells drilled on the property involved in dispute in this cause, into its pipe line, and that prior to taking said oil into its pipe line it was advised that the ownership

of the land upon which said wells were drilled, was lawfully vested in the said Henry Hunsicker and said C. J. Greene, Jr., by good and valid title, and that such oil was so taken into its pipe line in the belief, and in good faith, that this was and is the fact.

Wherefore, defendant, having made full and complete answer to the matters and things required of it in plaintiff's bill of complaint, prays that said bill of complaint be dismissed, and for judgment in its behalf for all costs incurred herein.

14 And, finally, defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all necessary orders and decrees as may seem proper in equity and good conscience, and from the nature of this case.

As it ever prays.

HAMPDEN STORY,
Solicitor for The Texas
Company.

Indorsed:—Answer of The Texas Company, Defendant. Filed Aug. 23, 1917.

15 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port Division.

 United States of America, Plaintiff,
 vs. No. 1156 In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
 Company, The Texas Company.

 The answer of the Producers Oil Company to the bill
of complaint herein.

 Now comes Producers Oil Company, one of the defend-
ants herein, and for answer thereto says:

I.

 It is admitted that on or before the 15th day of De-
cember, 1908, plaintiff was the owner of, as part of its
public domain, the tract of land described as Lots Two
(2) and Three (3) of Section Eight (8), Township Twen-
ty (20) North, Range Sixteen (16) West, situated in the
Parish of Caddo, State of Louisiana, as shown by plat
of survey approved March 28, 1917, by Clay Tallman,
Commissioner of the General Land Office, and Ex-Officio
Surveyor General of the State of Louisiana; and that on,
and prior to the aforesaid date, plaintiff was the owner
and entitled to the possession of the above described land,
and likewise of all the oil, petroleum, gas, and other min-
erals therein contained.

 Defendant shows that the aforesaid survey insofar as it
related to the above described property is illegal, null
and void, and that in making, or causing to be made, and
approved, said survey, as to said land, the Commission-
er of the General Land Office acted beyond his powers,

jurisdiction, rights, or authority, inasmuch as the said land at the time of the purported resurvey was not public land of the United States, subject to survey, but was, and still is, in the just and equitable ownership of Henry Hunsicker, and Charles J. Greene, Jr., as mineral locators, under the placer mining laws of the United States, as will be hereinafter specially shown.

II.

It is especially denied that the withdrawal order of December 15, 1908, referred to in the Second Article of the bill of complaint, included the lands herein involved, and specially is it averred, if the said withdrawal order should be construed to embrace and include the land, herein involved, that the said withdrawal order did, nor did it, purport, or intend, to withdraw the said land from location and purchase under the mining laws of the United States.

It is admitted that on the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, issued a proclamation ratifying, confirming, and continuing in full force and effect the previous order of withdrawal of December 15, 1908, but, as aforesaid, it is denied that the said previous orders of withdrawal included and embraced the land, herein involved, or if it did include and embrace the land, herein involved, it affected the rights of any citizen to locate and purchase the same under the mining laws of the United States.

It is admitted neither of the said orders of withdrawal has ever been vacated, but, as aforesaid, it is denied that either of said orders of withdrawal affected the land in suit, and it is specially reiterated that the withdrawal order of December 15, 1908, did not, nor did it, purport to, withdraw the said land, if it should be held to be in-

cluded in the withdrawal order, under the placer mining laws of the United States, or purchased under said laws; but it is averred that the said land remained thereafter free and open to exploitation for oil, gas, or other minerals, and to location and purchase under said mineral laws.

III.

Defendant denies that it, or its authors, in title, in violation of said orders of withdrawal and in violation of the rights of plaintiff, or contrary to its laws, and, or, without any valid and lawful right or authority, or in bad faith, entered upon and took possession of the property involved in this suit, for the purpose of drilling thereon for oil or gas, but defendant shows, as herein-after specifically set forth, that it entered upon said property, in good faith, under a mineral lease executed by Henry Hunsicker and Charles J. Greene, Jr., to it, of date March 28, 1910, for the purpose of exploiting the land described in said lease for oil and gas, and that its

17 said entry, and that of its authors, the said Henry Hunsicker and Charles J. Greene, Jr., upon said property was legal and valid, and under direct authority of the mining laws of the United States, permitting the exploitation and purchase of lands containing oil or gas, and under and by virtue of a valid location thereof, and under which location wells known as Hunsicker Nos. 1 and 2, referred to in Article III of the bill of complaint were drilled by this defendant, the drilling of which wells was under authority of said mining laws and not to the injury of the plaintiff.

IV.

Defendant admits that on or prior to December 15, 1908, it was not in possession of said land, but defendant

specially shows that prior to July 2, 1910, as hereinafter more fully appears, it, as lessee of said Henry Hunsicker and said Charles J. Greene, Jr., co-defendants, were in the bona fide and actual possession of said land in diligent prosecution of work thereon leading to the discovery of oil and gas, and that such discovery was in fact made prior to the withdrawal order of July 2, 1910, by this defendant as lessee of the said Henry Hunsicker and Charles J. Greene, Jr.

V.

Defendant avers that, on the 20th day of March, 1910, the said Henry Hunsicker made a location, under the mining laws of the United States, for the fractional southwest quarter (SW4) of Northeast quarter (NE4) and fractional Northwest quarter (NW4) of Southeast quarter (SE4), and the said Charles J. Greene, Jr., on said March 20, 1910, made a location, under said laws, to the Southwest quarter (SW4) of the Southeast quarter (SE4) of Section Eight (8), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, the said lands at the date of their respective locations being vacant surveyed lands of the United States, and that notices of locations were on that date posted upon said land by Henry Hunsicker and C. J. Greene, Jr., on each of their respective locations, and each of whom on that date took possession thereof, and that on the 22nd day of March, 1910, said Henry Hunsicker and said C. J. Greene, Jr., each filed notices of their respective locations for record in the Conveyance Record Book 59. page 216, of the Office of the Clerk and Ex-Officio Recorder of the Parish of Caddo, State of Louisiana; that on that date the said lands, being vacant lands of the United States not withdrawn from location under

the placer mining laws of the said United States, were, under said laws, free and open to exploration, location and purchase, and that the said Henry Hunsicker and the said Charles J. Greene, Jr., availed themselves of these laws, and, as qualified citizens of the United States, made each of such locations.

Defendant shows that it entered into the actual possession of said property under and by virtue of a lease executed by said Henry Hunsicker and Charles J. Greene, Jr., to it, of date March 28, 1910, and commenced operations for the exploitation of said lands for oil and gas, and the discovery of the same.

Defendant further avers that under and by virtue of said mineral lease, it entered upon said tract of land, under possession given to it by said Henry Hunsicker and Charles J. Greene, Jr., and drilled two wells thereon, designated as Hunsicker Nos. 1 and 2, and from the products of which wells this defendant obligated itself to pay, or deliver, to the said Henry Hunsicker and Charles J. Greene, Jr., a royalty from wells, producing oil and One Hundred (\$100.00) Dollars, per annum, from each well from which gas is marketed or used off the leased premises, as provided in said lease.

Defendant shows that having taken possession of said leased property, work for the drilling of a well was promptly and diligently begun, leading to the discovery of minerals, and that, from such work or effort on its part, on the 20th day of June, 1910, gas was discovered in large quantities in said well designated as Hunsicker No. 1, aforesaid, as will be hereinafter shown.

VI.

Defendant denies that it is an unlawful trespasser upon said tracts of land, or any portion or part thereof, here-

in involved, but avers that its possession thereof is under lawful authority and permission through and by the said Henry Hunsicker and the said C. J. Greene, Jr., the equitable and lawful owners of said lands, leased unto it, with the right granted to it to drill as many wells thereon as it deems proper, and as its lessors might or could do, and to operate for and produce oil and
 19 to dispose of such oil and gas so produced therefrom.

VII.

Defendant, as aforesaid, specially denies that it acted in bad faith in the premises; but avers that all of its acts of possession and conduct were in good faith, it holding under the said Henry Hunsicker and said C. J. Greene, Jr., as locators, in good faith, of the lands in controversy, leased to this defendant, made under the laws of the United States; and, this defendant further denies that the lands in controversy, and the oil and gas, or the oil or gas, taken therefrom, exceeds the sum of Forty Thousand (\$40,000.00) Dollars, as will be hereinafter shown.

VIII.

Defendant further avers, that it drilled three (3) wells upon the property described in the lease of the said Henry Hunsicker and C. J. Greene, Jr., heretofore referred to, designated as Hunsicker wells Nos. 1, 2 and 3; that it started and commenced operations for the drilling of a well designated as Hunsicker No. 1, May 8, 1910, and discovered gas in paying quantities, June 20, 1910; and prior to the withdrawal order of date July 2, 1910; that said well produced gas in paying quantities, and that this defendant continued work on said well in an attempt and effort to drill the same deeper for the purpose of produc-

ing oil, and that said work thereon continued, on said well, up to March 11, 1911, and that failing to find oil through said well, it thereafter abandoned work thereon, and removed its machinery from said well to a location for the drilling of what is known as Hunsicker No. 2; completing said well May 20, 1911, as an oil producing well; defendant says, that, though said Well No. 1 produced gas in large quantities, none of said gas was used or utilized, or sold, by this defendant, and that said well finally "petered out" and ceased to produce any gas.

That there was produced from the property leased by this defendant, from May 26, 1911 to June 30, 1917, inclusive, ninety-eight thousand six hundred 20 twelve and 07-100 (98,612.07) barrels of oil, of the value of Seventy-seven thousand five hundred one and 91-100 (\$77,501.91) Dollars, as shown by statements marked Exhibits "A" and "B" hereto annexed and made parts hereof; and that of the total oil produced upon the leased premises there was produced from and out of said Hunsicker Well No. 2, drilled on the land, in controversy, between May 26, 1911, and June 30, 1917, inclusive, seventy thousand five hundred sixty-six and 18-100 (70,566.18) barrels of oil, of the value of Forty-eight thousand four hundred twenty-eight and 49-100 (\$48,428.49) Dollars, as shown by the said exhibits aforesaid; the preparation of the said Producers Oil Company, in said oil, being five-sixths (5-6), and the proportion of the said Henry Hunsicker and C. J. Greene, Jr., being one-sixth (1-6), to be divided among them as their interests herein appear.

Defendant files herewith a statement of the oil produced and the price for which five-sixths (5-6) of the same was sold, at various and divers times between the said May 26, 1911, and June 30, 1917, inclusive, the other one-sixth (1-6) of such oil being held in suspense by The

Texas Company, all of which will be more fully shown by reference to the exhibits marked "A" and "B", hereinabove referred to and hereto annexed and made parts hereof.

IX.

The Producers Oil Company, defendant herein, in the alternative further shows, that the cost and expenses incurred and paid for the drilling and equipping of said wells Hunsicker Nos. 1 and 2, amount, for the drilling of Hunsicker No. 1, to Seventeen thousand four hundred eighty-eight and 07-100 (\$17,488.07) Dollars, and work thereon and thereabout in drilling the same deeper for oil, as shown by Exhibits "B" and "C" respectively, hereto annexed and made parts hereof, and for the drilling of well Hunsicker No. 2, Eight thousand sixty-six and 97-100 (\$8,066.97) Dollars, and that the operating expenses in maintaining said well No. 2, and handling its production, amounts, up to June 30, 1917, to Twenty-eight thousand four hundred seventy and 75-100 (\$28,470.75) Dollars, making the total cost and expenditure, for the drilling of said well and the operations thereof, Thirty-six thousand five hundred thirty-seven and 72-100 (\$36,537.72) Dollars, aggregating the cost of drilling said wells Nos. 1 and 2, and expenses of operating said well No. 2, the sum of Fifty-four thousand twenty-five and 21 79-100 (\$54,026.79) Dollars, as shown by bills of particulars hereto annexed and made parts hereof, and marked Exhibits "B," "C" and "D."

X.

And defendant, Producers Oil Company, further and specially avers, and in the alternative, that it drilled the said Hunsicker Wells Nos. 1 and 2 under said lease made by the said Henry Hunsicker and C. J. Greene, Jr., of

date March 28, 1910, as aforesaid, and took possession thereof for the purpose of developing same for oil and gas, acting in good faith and in the belief that the title of said land was validly and legally vested in the said Henry Hunsicker and C. J. Greene, Jr., as owners, and as lawful locators thereof under the placer mining laws of the United States, and that all of its acts and conduct, as well as those of the said Henry Hunsicker and C. J. Greene, Jr., were in absolute good faith, and that, in the event it should be held that the plaintiff is the owner of said tracts of land, herein involved, that the Producers Oil Company should be, and is entitled to be, reimbursed the entire cost of drilling, equipping, maintaining and operating said Hunsicker Wells Nos. 1 and 2, as aforesaid, before it can be held liable for any oil or gas extracted therefrom.

XI.

Defendant reserves the right to amend this answer and to file a statement of the oil produced from well Hunsicker No. 2 and the expenses of operating the same from June 30, 1917, up to the hearing of this cause.

XII.

Defendant avers that it desires that there should be reserved to it the right to sue the said Henry Hunsicker and the said C. J. Greene, Jr., in warranty, for the return of the price paid them by this defendant for the lease aforementioned and all damages it may suffer in the event of its eviction from the property in controversy.

Wherefore, having thus made full answer to all of the matters and things made in the bill of complaint, this defendant prays that the said bill be dismissed, and for judgment for its costs in this behalf incurred.

And in the alternative, in the event the Court should hold that the plaintiff is the owner of the tracts of land, or property, in controversy, then defendant, Producers Oil Company, prays that it be adjudged not liable to plaintiff on account of the oil or gas taken or extracted from said property until plaintiff shall have reimbursed defendant for the drilling, maintaining, equipping and operating of the wells from which gas or oil were produced, and all incidental charges in handling, preserving, storing and transporting said oil, and that, in the event, if this relief be refused, that it be adjudged that the cost and expenses of drilling, equipping, maintaining and operating said wells be in excess of the value of the total oil produced therefrom, that this defendant, or either of them, are not to be liable to the plaintiff in and for any amount.

And defendant further prays that, in the event that the said tracts of land be declared in the ownership of the plaintiff, and the locations made by said Henry Hunsicker and said C. J. Greene, Jr., under the mining laws of the United States, be held invalid, there should be reserved to this defendant its rights to sue said Henry Hunsicker, and said C. J. Greene, Jr., for the return of the price paid to them, or either of them, for the lease to the lands herein, in controversy, and described in said lease, and for all such damages as it may be occasioned by its eviction from said tracts of land, or any part thereof.

And, finally, defendant further prays for all necessary orders in the premises, and for all general and equitable relief, and for all such as it may be entitled to from the facts and the evidence which may be adduced on the trial hereof.

HAMPDEN STORY,

Solicitor for Producers Oil Co.

Indorsed:—Answer of Producers Oil Co., Defendant.
Filed Aug. 23, 1917.

23 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1156 In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company.

1.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and renewing and reaffirming the allegations and prayer of the original bill of complaint filed herein, for reply to the set off and counterclaim asserted by the Producers Oil Company in its answer herein, denies all the allegations of the said defendant's answers, and, particularly, paragraphs 9, 10, 12 and the prayer of said answer, as well as all other portions thereof, relating to the said set off and counterclaim.

2.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim whatever in the premises. Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint herein, drilled a well thereon, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint,

in bad faith, and said defendant was a wilful and knowing trespasser on said land.

3.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off or counterclaim in any amount, which is denied, the sum claimed by defendant is excessive and should not be allowed.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the said defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint herein.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendant's (Producers Oil Company) Set off and Counterclaim. Filed Aug. 25, 1917.

25 In the District Court of the United States, for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America,

Plaintiff.

vs.

No. 1156, In Equity.

Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company,

Defendants.

The answer of Charles J. Greene, Jr., one of the de-
fendants herein, to the bill of complaint respectfully shows:

I.

It is admitted that on and before December 15, 1908, the plaintiff was the owner as a part of its public domain, of the tract of land which is described as Lots Two (2) and Three (3) of Section Eight, Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and Ex-officio Surveyor General for the State of Louisiana; and that on and prior to the aforesaid date, plaintiff was the owner and entitled to the possession of the above described land, and, likewise, of all oil, petroleum, gas and other minerals therein contained.

Defendant shows, however, that the aforesaid survey, in so far as it related to the above described property is illegal, null and void; and that, in making and approving said survey as to said land, the Commissioner of the General Land Office acted beyond his power, jurisdiction,

right or authority, inasmuch as the said land at the date of the said purported resurvey was not public land of the United States subject to survey, but was, and still is, in the full equitable ownership of the defendants as mineral locators, as will be hereinafter specifically shown.

II.

It is specially denied that the withdrawal order of December 15, 1908, referred to in the Second Article of the bill of complaint included the land herein involved, and should it be held that the said withdrawal order did include the land herein involved, then it is shown that the said withdrawal order did not, nor did it purport to withdraw the said land from location and purchase under the mining laws of the United States.

It is admitted that on the second day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, issued a proclamation, ratifying, confirming and continuing in full force and effect, the previous order of withdrawal of December 15, 1908, but, as aforesaid, it is denied that the said previous order of withdrawal included and embraced the lands herein involved; or, if it did include the land herein involved, that it affected the rights of any citizen to locate and purchase the same under the mining laws of the United States.

It is admitted that neither of said withdrawal orders has ever been vacated, but, as aforesaid, it is denied that either of said withdrawal orders affected the land in this suit, and it is specially re-iterated that the withdrawal order of December 15, 1908, did not, nor did it purport to withdraw the said land, if it should be held to be included in the withdrawal order, from location under the placer mining laws of the United States, or purchased

under said laws; but, it is averred that the said land remained thereafter free and open to exploration for oil, gas and other minerals and to location and purchase under said mineral laws.

III.

Defendant denies that, in violation of said order of withdrawal and in violation of the rights of the plaintiff, or contrary to its laws, or without any valid title, lawful right or authority or in bad faith, that he entered upon and took possession of the property involved in this suit for the purpose of drilling thereon for oil or gas, but defendant shows that, as hereinafter specifically set forth, his entry upon said property was legal and valid and under direct authority of the mining laws of the United States, permitting location, exploration and purchase of lands containing oil or gas, and under and by virtue of a valid location thereof, under which location

the wells referred to in this article of the bill
 27 of complaint were drilled; the drilling of which wells was under the authority of the said mining laws and not to the injury of the plaintiff.

IV.

Defendant admits that on and prior to December 15, 1908, he was not in possession of said land; but defendant specially shows that prior to July 2, 1910, as hereinafter more fully appears, he, through his lessee, the Producers Oil Company, was in the actual possession of said land as a bona fide occupant thereof, in diligent prosecution of work thereon, leading to the discovery of oil and gas; and, that such discovery was in fact made prior to the withdrawal order of July 2, 1910.

V.

Defendant shows that on March 20, 1910, he made a location under the mining laws of the United States of the Southwest quarter (SW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section Eight (8), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, the same being vacant surveyed lands of the United States and that notices of location were on that date posted upon the said land, of which defendant on that date took possession; and that, on March 22, 1910, notice of said location was filed for record in the Conveyance Records of Caddo Parish, Louisiana; that, on that date the said land, being vacant land of the United States, not withdrawn from location under the mining laws of the United States, was under said laws, free and open to exploration, location and purchase; and that, availing himself of these laws, defendant, as a qualified citizen of the United State, made such valid location.

Defendant shows that, being in actual possession of said property under said location and under the laws of the United States, and not being able, financially, to perform the actual work necessary to drilling wells for oil and gas thereon, the cost of which in the particular territory in which the said land is located being very high, he did, on March 28, 1910 execute a valid mineral lease on said property in favor of the Producers Oil Company, which said lease was recorded in the Conveyance records of Caddo Parish, Louisiana.

Defendant shows that, under and by virtue of said lease and that said valid location, the Producers Oil Company entered upon the said property under possession given by him, and drilled wells thereon, from the proceeds of which wells, however, the royal-

ties due this defendant were withheld, and are now being withheld by the said Producers Oil Company.

Defendant shows that, having taken possession of the said property through the said lessee, work was promptly and diligently begun, leading to the discovery of minerals, and that on June 20, 1910, gas was discovered thereon in paying quantities, thereby completing the location and investing this defendant with all the rights of a mineral locator under the laws of the United States, to-wit, with the full equitable title to the said property, and the right to purchase the patent, which patent has been denied in spite of his efforts to obtain same, on account of the illegal construction placed upon the withdrawal orders above referred to, by the officers of the United States Land Office.

VI.

Defendant denies that he is an unlawful trespasser upon said land, but avers that his possession is legal and that he is the equitable owner of said property, with the right to drill as many wells thereon as he deems proper, and to operate, sell, and dispose of the oil and gas produced therefrom.

VII.

Defendant, as aforesaid, specially denies that he acted in bad faith in the premises, but avers that all of his acts of possession and location were in good faith and in conformity with his rights as previously set forth.

Wherefore, this defendant having made full and complete answer to the bill of complaint, prays that the said bill be dismissed, and that he be discharged with all costs herein sustained.

He further prays for all necessary orders, for equitable and general relief,

MILLS & COOK,
Solicitors for Defendant, Chas.
J. Greene.

Indorsed: Answer of Charles J. Greene, Jr. Mill & Cook, Attorney at Law, Sheveport, La. Filed Sept. 29, 1917.

B.

29 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America,
versus No. 1156.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company.

Now comes the defendant, Producers Oil Company, and supplements with leave of Court, its answer heretofore filed herein, by averring that the production of oil from wells drilled on the property, in controversy, from July 1, 1917, to December 31, 1917, inclusive, amounts to five hundred and four and 48-100 (504.48) barrels, and that the expenses and costs of operating the same amount to one thousand five hundred sixty-eight and 97-100 (\$1,568.97) Dollars, as shown by statement of production and expenses, marked Defendant's Exhibit "A-1" hereto attached and made a part hereof.

Wherefore defendant prays that it be allowed to file said supplemental answer and the statement attached hereto; and for all general relief, and for all such other orders and decrees as may be meet and proper in the premises.

HAMPDEN STORY,
Attorney for Producers Oil Co.

30 **STATEMENT OF EXPENDITURES & RECEIPTS FROM HUNSICKER WELL NO. 2 AS OF DECEMBER 31st, 1917.**

Receipts in excess of expenditures as per statement previously rendered as of June 30th, 1917,	3,844.67
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Expenditures July 1, 1917 to Dec. 31st, 1917 as per statement attached	1,568.25
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Receipts July 1, 1917 to Dec. 31st, 1917 as per statement attached	816.84
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Expenditures in excess of receipts July 1st, 1917 to December 31st, 1917	751.41
--	--------

Receipts in excess of expenditures from beginning to Dec. 31st, 1917	\$3,093.26
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Exhibit A-1

Sheet 1.

Statement of Cost or Drilling Hunsicker Well No. 2 and estimate of operating expenditures from completion to December 31st, 1917, as furnished by C. P. Clayton.

Total Cost of drilling well No. 2 and estimate of June 30th, 1917 as per statement previously rendered	36,537.72
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July, 1917, operating expenditures	395.25
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Aug. 1917, operating expenditures	395.25
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Sept. 1917, operating expenditures	382.50
------------------------------------	--------

Oct. 1917, operating expenditures	395.25
-----------------------------------	--------

November, 1917, not operated	
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December, 1917, not operated	1,568.25
------------------------------	----------

Total expenditures as of Dec. 31st, 1917	\$38,105.97
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Exhibit A-1

Sheet 2.

31 Statement of Oil Run from Hunsicker No. 2
from July 1st, 1917, to Dec. 31st, 1917, com-
puted from percentage furnished by C. P.
Clayton.

1917	Percent	Barrels Gross	Royalty Bbls.	Net Barrels	Price	Amount
July	.676	287.60	47.94	239.66	1.90	455.36
August	.513					
September	.536					
October	.513	216.88	36.14	180.74	2.00	361.48
November						
December						
		504.48	84.08	420.40		816.84
Total receipts to June 30th, 1917						40,382.39
Total receipts to Dec. 31st, 1917						41,199.23

Exhibit A-1.
Sheet 3.

Statement of Operating Expenses.

Hunsicker Lease Proportioned to Wells.
July 1st to Dec. 31st, 1917 Incl.

1917	Hunsicker No. 2	Hunsicker No. 3
July	\$395.25	\$395.25
August	395.25	395.25
September	382.50	382.50
October	395.25	395.25
November	.....	.....
December	.....	.....
Total	\$1568.25	\$1568.25

Exhibit A-1
Sheet 4.

32 Statement of Oil run from Hunsicker Lease from
July 1st, 1917, to December 31st, 1917.

		1/8	5/6		
	Gross	Royalty	Net	Price	Amount
	Barrels	Barrels	Barrels		
1917					
July	425.44	70.91	354.53	1.90	673.61
Aug.					
Sept.					
Oct.	422.76	70.46	352.30	2.00	704.60
Nov.					
Dec.					
	848.20	141.37	706.83		\$1,388.21

Exhibit A1.
Sheet 5.

Indorsed:—Answer of Producers Oil Co., with Statements of production and operating expense from June 30, 1917, to Dec. 31, 1917. Filed Feb. 25, 1918.

33 (INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO PRODUCERS OIL COM-
PANY AND THE TEXAS COMPANY).

1.

State whether or not the Producers Oil Company drilled on Lots 2 and 3 of Section 8, T. 20, N. R. 16 W., the wells known as Hunsicker Nos. 1 and 2.

2.

State when the said wells were commenced and when they were completed.

3.

Did said wells produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

4.

During what period were said wells operated in the production of oil, and when, if at all, did they cease to produce oil?

5

State how much oil was extracted and removed by the Producers Oil Company, or any other defendant, from the land in controversy, (a) from the time said wells began producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

6.

State whether or not the said wells were operated in the production of oil as entities, or in connection with other wells on the same or different tracts of land.

7.

Was a separate and complete record kept by the Producers Oil Company, or any other defendant, of the oil produced by Hunsicker Nos 1 and 2? If so, state how said record was kept, and attach to your answers a copy of said record. If your answer is in the negative, explain why such record was not kept.

8.

Was record of any kind kept by the Producers Oil Company or any other defendant, while said wells were in operation, showing the amount of oil produced therefrom, by the day, week, month, year, or any period? If not, state why no record of the production of such wells was kept.

34

9.

If you have said in answer to the foregoing interrogatories, that no record of any kind was kept of the production of said well, then state whether there is any way, or method, by which the actual, or approximate, production of said wells may be ascertained, if so, state such method.

10.

State whether or not the production of the wells in suit, as given in your answers to the preceding interrogatories, and in the answer of the Producers Oil Company to the bill of complaint herein, is exact, or is based upon an estimate of any kind.

11.

If said production is based upon an estimate of the quantity of oil produced by Hunsicker Nos. 1 and 2, in connection with other wells not in suit, then state (a) the total production of all wells operated in conjunction with Hunsicker Nos. 1 and 2, (b) where such wells are located, and (c) the name of all such wells.

12.

If the production of Hunsicker Nos. 1 and 2 as given in the answer of the Producers Oil Company to the bill of complaint, and in your answers to the preceding interrogatories, is estimative and not exact, then state the manner in which you arrived at, or figured, the production of such wells.

13.

What was the initial production of Hunsicker Nos. 1 and 2, and the total production, by months, or said wells during the period of their operation?

14.

State where and from whom the data, or information, relative to the production of said wells, as given in the answer of the Producers Oil Company to the bill of complaint herein, was obtained. Give names and addresses of persons from whom such data, or information was secured.

15.

35 What was the total value of the oil produced by the wells known as Hunsicker Nos. 1 and 2? State whether the value as given by you in your answer to this question is exact or approximate.

16.

Was not the oil taken from said wells sold by the Producers Oil Company to The Texas Company?

45

17.

What was the total price received by the Producers Oil Company for all the oil produced by the wells in controversy,

18.

What was the total price received by the Producers Oil Company for all the oil produced by Hunsicker Nos. 1 and 2, and any other wells that may have been operated in connection with said wells?

19.

Where and in what manner was the oil above mentioned delivered to the purchaser?

20.

Was not the oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks, in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company?

21.

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was sold by the Producers Oil Company to The Texas Company?

22.

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said wells were in operation?

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23.

State whether or not said corporations, namely, Producers Oil Company and The Texas Company, were, or not, managed by the same officers, or directors, and whether the management of each was not the same at the time of the production and sale of oil from said wells?

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24.

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil, and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said wells were drilled and operated?

25.

What are the principal products manufactured from petroleum, or crude oil?

26.

State the total value, either exactly, if you know, or approximately if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

27.

State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and the amounts so received by it from such profits.

28.

How much money was paid as royalty by the Producers Oil Company or The Texas Company to Henry Hunsicker and Charles J. Greene, Jr., defendants herein, out of the proceeds of the sale of oil taken from the land in controversy?

29.

Did said wells produce any gas either in merchantable quantities or sufficient in amount for use in the operation of said wells or other wells? In either event, state what disposition was made of such gas and what was its value.

30.

State how much royalty Henry Hunsicker and Charles J. Green, Jr., received from the Producers Oil Company or The Texas Company out of the proceeds of the sale of oil taken from the land in controversy.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Note: All of the above interrogatories to be answered by the Producers Oil Company and The Texas Company, except No. 30. Only Interrogatory No. 30, is to be answered by Henry Hunsicker and Charles J. Greene, Jr.

37 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America, Complainant,
vs. No. 1156 In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company.

In the above entitled matter, now comes The Texas Company, one of the defendants, through its undersigned counsel, and on suggesting to the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are the Interrogatories Nos. 25, 26, and 27. as follows:

Interrogatory No. 25: What are the principal products manufactured from petroleum, or crude oil?

Interrogatory No. 26: State the total value, either exactly, if you know, or approximately, if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

Interrogatory No. 27: State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and the amount so received by it from such profits.

Now, this defendant avers that it will fully appear from the bill of complaint and the answers herein filed on the part of The Texas Company, that the only facts and issues between the plaintiff and this defendant is the amount and value of the oil run into its pipe line by, or that may have been bought by it from the Producers Oil Company,

Henry Hunsicker and Charles J. Greene, Jr., produced from wells drilled on the property in controversy, the ownership of which is claimed by the plaintiff; that from the issues so tendered and made by the bill of complaint, the answers to these interrogatories could not, in any wise, tend to support the demands of the plaintiff against the defendant, and are, therefore, irrelevant, incompetent and immaterial to any issues or matters involved in said cause as between the plaintiff and this defendant; and an answer thereto would not elicit any fact or facts material, relevant or competent to the support of plaintiff's action, and that said interrogatories should and ought to be stricken out.

Wherefore, this defendant prays, that, after due consideration, said interrogatories be stricken out, and that this defendant be dispensed with the necessity of answering the same.

It prays for all such rules, orders and decrees; and for all costs and general relief.

HAMPDEN STORY,
Attorney for The Texas Company.

Service accepted. All rights reserved, this Feb. 11, 1918.

ROBERT A. HUNTER,
Spl. Asst. to the Atty. General.

Indorsed:—Motions to Strike Out Interrogatories Nos. 25, 26 and 27, Propounded to The Texas Company.

39 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America,

vs.

No. 1156.

Henry Hunsicker, Charles J. Green, Jr., Producers Oil
Company, The Texas Company.

Now comes The Texas Company, and files herein the answers of said Company, through T. J. Donoghue, its Vice-President, to Interrogatories Nos. 21, 22, 23, and 24, and through R. J. Daniels, its Chief Accountant, to all other interrogatories, propounded by the plaintiff, in the above cause, excepting Interrogatories Nos. 25, 26 and 27, motion having been made to strike them out.

By its Attorney,

HAMPDEN STORY,

40 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America, Complainant,

vs.

No. 1156 In Equity.

Henry Hunsicker, Charles J. Greene, Jr., Producers
Oil Company, The Texas Company.

In the above entitled cause, T. J. Donoghue, Vice-President of The Texas Company, appears and answers interrogatories propounded to The Texas Company as follows:

Interrogatory No. 21:

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was

sold by the Producers Oil Company to The Texas Company?

Answer to Interrogatory No. 21:

The relation that existed between these two corporations was that of contract. There existed during that time a contract or contracts under which The Texas Company agreed to purchase from Producers Oil Company, and Producers Oil Company agreed to sell and deliver, all oil produced in the field where the wells involved in this suit are located, paying therefor the market or posted price. For a time there was a limit as to the minimum amount that The Texas Company undertook to buy and pay for, but this limit was not exercised as to the particular oil in controversy, and The Texas Company under said contract bought and paid for all the oil produced from the wells involved in this litigation.

Interrogatory No. 22:

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said wells were in operation?

Answer to Interrogatory No. 22:

The Texas Company purchased all the oil produced by Producers Oil Company from the wells involved in this suit during the time the wells were operated by Producers Oil Company. It did not, however, during this period buy all the oil produced by Producers Oil Company everywhere. There was oil produced by that company and sold to other parties than The Texas Company.

Interrogatory No. 23:

State whether or not said corporations, namely, Producers Oil Company and The Texas Company, were, or

not, managed by the same officers or directors, and whether the management of each was not the same at the time of the production and sale of oil from said well?

Answer to Interrogatory No. 23:

The two companies, Producers Oil Company and The Texas Company, were not managed by the same officers or directors, and the management of each was not the same either before or during the time of the production by Producers Oil Company and the sale of the oil from said wells to The Texas Company, nor for that matter, has the management been the same since. The two companies have never been identical either in stock ownership, directors or officers, but have always had a different set of stockholders, directors and officers, and have maintained not only separate complete corporate organizations, but separate offices, equipment and assets, and this condition existed during the existence of both corporations.

Interrogatory No. 24:

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil, and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said wells were drilled and operated?

Answer to Interrogatory No. 24:

The Producers Oil Company was engaged in the production and sale of crude oil, and The Texas Company was engaged in the sale of crude oil, as well as refining and the sale of refined products of crude oil. The Texas Company purchased from Producers Oil Company large amounts of crude oil produced by the latter, as it purchased likewise large amounts of oil produced by other producers, which oil it refined and sold.

42 This was during the time the wells involved
 in this litigation were drilled and operated by
Producers Oil Company.

T. J. DONOGHUE.

The State of Texas,
County of Harris.

I, H. Tomfohrde, a Notary Public, in and for the county of Harris, State of Texas, do hereby certify that the above witness, T. J. Donoghue, vice-president of The Texas Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to the said witness, and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof I have hereunto set my hand and official seal, on this the 14th day of February, A. D. 1918, in the county of Harris, State of Texas.

H. TOMFOHRDE,

Notary Public in and for
Harris County, Texas.

My commission expires May 31, 1919.

43 United States District Court for the Western
 District of Louisiana, Shreveport Division.

United States of America, Complainant,

vs. No. 1156 In Equity.

Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company, Defendant.

In the above entitled matter, R. J. Daniel, who as Chief Accountant, had charge of the books of account of the Pipe Line Department of The Texas Company, and the books of account showing oils run to the pipe line of and purchased by The Texas Company from producers of oil including oils run to the pipe line of and purchased by The Texas Company from the wells included in this suit; that his title and position as Chief Accountant of the Pipe Line Department of The Texas Company continued up to July 1, 1917, at which time the pipe lines of The Texas Company in Louisiana, including pipe lines serving the wells involved in this suit, were transferred to a new corporation known as The Texas Pipe Line Company, but that the books of account showing oils run to the Pipe Line Department of The Texas Company and to The Texas Pipe Line Company together with the books of account showing oils purchased by The Texas Company included in both instances the wells involved in this litigation have remained in his custody and control up to this date, and who appearing answers the interrogatories propounded to The Texas Company (excepting Nos. 25, 26 and 27, a motion having been made to strike them out, and except interrogatories Nos. 21, 22, 23 and 24, which are answered by Mr. T. J. Donoghue) as follows:

Interrogatory No. 1:

State whether or not the Producers Oil Company, drilled on Lots 2 and 3 of Section 8, T. 20, N. R. 16 W., the wells known as Hunsicker Nos. 1 and 2.

Answer to Interrogatory No. 1:

The records of The Texas Company do not disclose whether or not the Producers Oil Company drilled the wells mentioned, but on information I am informed that it did.

44 Interrogatory No. 2:

State when the said wells were commenced and when they were completed.

Answer to Interrogatory No. 2:

The records of The Texas Company do not reflect when said wells were begun nor when they were completed.

Interrogatory No. 3:

Did said wells produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

Answer to Interrogatory No. 3:

The records in my custody do not show the production of oil from any particular well but the records show that oil was run from the lease known as the lease of Henry Hunsicker and C. J. Green, Jr., to Producers Oil Company, and this oil was sold to The Texas Company by the Producers Oil Company, The Texas Company paying for the same.

Interrogatory No. 4:

During what period were said wells operated in the production of oil, and when, if at all, did they cease to produce oil?

Answer to Interrogatory No. 4:

The records in my custody do not reflect when the particular wells in question were operated for the production of oil nor when they ceased to produce but only reflect the runs of oil from the lease upon which these wells were located.

Interrogatory No. 5:

State how much oil was extracted and removed by the Producers Oil Company, or any other defendant, from the land in controversy, (a) from the time said wells began producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

Answer to Interrogatory No. 5:

The records in my custody show only the amount of oil that was run to the pipe line of The Texas Company from the lease of Hunsicker and Greene to the Producers Oil Company without reference to the production from any particular well or wells situated upon said lease. The records in my custody disclose that from the date at which the first oil was run to and received by the pipe line of The Texas Company from said lease
 45 and which runs include oil produced from all of the wells situated upon said lease to the date of July 1, 1917, is 98,621.10 barrels and that there was run from said lease to the pipe line of The Texas Company from July 1, 1917, to January 1, 1918, 848.20 barrels of oil.

Interrogatory No. 6:

State whether or not the said wells were operated in the production of oil as entities, or in connection with other wells on the same or different tracts of land.

Answer to Interrogatory No. 6:

The records in my custody disclose only the oil run to and received by the pipe line of The Texas Company as coming from the Hunsicker-Greene Lease and not as oil produced from any particular well situated upon said lease.

Interrogatory No. 7:

Was a separate and complete record kept by the Producers Oil Company, or any other defendant, of the oil produced by Hunsicker Nos. 1 and 2. If so, state how said record was kept, and attach to your answers a copy of said record. If your answer is in the negative explain why such record was not kept.

Answer to Interrogatory No. 7:

The records in my custody do not reflect that any separate or complete record of any kind or any record at all was kept of the separate production from any well situated on the Hunsicker-Greene lease and I have no knowledge as to whether or not any such record was kept by the other defendants.

Interrogatory No. 8:

Was a record of any kind kept by the Producers Oil Company, or any other defendant, while said wells were in operation, showing the amount of oil produced therefrom, by the day, week, month, year, or any period. If not, state why no record of the production of such wells was kept.

Answer to Interrogatory No. 8:

The records in my custody do not reflect that any record was kept while said wells referred to were in operation showing the amount of oil produced therefrom by the

46 day, week, month or year, but the records in my custody reflect that a record was kept of the oil and paid to it by The Texas Company for its run from the Hunsicker-Greene lease to the pipe line of The Texas Company from all of the wells on said lease, including the wells in controversy herein and other wells not in controversy herein, by the day, month and year; that it was not necessary or required that The Texas Company should keep any record of the separate production of any well from which oil was run to its pipe line or purchased by it.

Interrogatory No. 9:

If you have said in answer to the foregoing interrogatories, that no record of any kind was kept by you of the production of said wells, then state whether there is any way, or method, by which the actual, or approximate, production of said wells may be ascertained. If so, state such method.

Answer to Interrogatory No. 9:

From the standpoint of pipe line accounting it is not necessary to keep any record of a separate production of any particular well and I do not know by what method the actual or approximate production of any particular well might be ascertained.

Interrogatory No. 10:

State whether or not the production of the wells in suit, as given in your answers to the preceding interrogatories, and in the answer of the Producers Oil Company to the bill of complaint herein, is exact, or is based upon an estimate of any kind.

Answer to Interrogatory No. 10:

The records in my custody, as heretofore testified to, do not reflect the production of the wells in question nor

of any particular well and I have no knowledge as to the method by which the production from these wells has been figured.

Interrogatory No. 11:

If said production is based upon an estimate of the quantity of oil produced by Hunsicker Nos. 1 and 2, in connection with other wells not in suit, then state (a) the total production of all wells operated in conjunction with Hunsicker Nos. 1 and 2, (b) where such wells are located, and (c) the names of all such wells.

47 Answer to Interrogatory No. 11:

The quantities of oils given in these answers represent oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease and the records in my custody do not reflect nor have I any knowledge of the total production of all wells operated in conjunction with all wells in controversy herein nor where such wells are located or their names, except as possibly the names of the wells as certain specific runs might be reflected by the run tickets.

Interrogatory No. 12:

If the production of Hunsicker Nos. 1 and 2 as given in the answer of the Producers Oil Company to the bill of complaint, and in your answers to the preceding interrogatories, is estimative, and not exact, then state the manner in which you arrived at, or figured, the production of such wells.

Answer to Interrogatory No. 12:

The answers given by me to the preceding interrogatories do not state any separate production for the wells in controversy herein but reflect only the quantity of oil

that have been run to and received by the pipe line of The Texas Company from the Hunsicker-Greene lease and without reference to the separate production of any particular well.

Interrogatory No. 13:

What was the initial production of Hunsicker Nos. 1 and 2, and the total production, by months, of said wells during the period of their operation.

Answer to Interrogatory No. 13:

The records in my custody do not reflect nor have I any knowledge or information as to the initial production of the wells mentioned.

Interrogatory No. 14:

State where and from whom the data, or information, relative to the production of said wells, as given in the answer of the Producers Oil Company to the bill of complaint herein, was obtained. Give names and addresses of persons from whom such data, or information was secured.

Answer to Interrogatory No. 14:

I am not informed as to where and from whom the data, or information relative to the production of said
48 wells as given in the answer of the Producers Oil Company to the bill of complaint herein was obtained.

Interrogatory No. 15:

What was the total value of the oil produced by the wells known as Hunsicker Nos. 1 and 2. State whether the value as given by you in your answer to this question is exact or approximate.

Answer to Interrogatory No. 15:

The records in my custody disclose that the total value of the oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease from the date at which oil was first run to said pipe line to the date of January 1, 1918, is \$80,274.64, which is the market value of said oil.

Interrogatory No. 16:

Was not the oil taken from said wells sold by the Producers Oil Company to The Texas Company.

Answer to Interrogatory No. 16:

The oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease and sold by the Producers Oil Company to The Texas Company was received into the pipe line of said Txeas Company from the measuring tanks of Producers Oil Company, situated upon said lease.

Interrogatory No. 17:

What was the total price received by the Producers Oil Company for all the oil produced by the wells in controversy.

Answer to Interrogatory No. 17:

The records in my custody do not reflect the payment to the Producers Oil Company of an amount representing the purchase price of oil produced from any particular well but show the amount of money paid for oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease without reference to such oil having been produced from any particular well situated upon said lease.

Interrogatory No. 18:

What was the total price received by the Producers Oil Company for all the oil produced by Hunsicker Nos. 1 and 2, and any other wells that may have been operated in connection with said wells.

Answer to Interrogatory No. 18:

49 The records in my custody reflect that the total price received by the Producers Oil Company and paid to it by The Texas Company for its proportion of all the oil run to the pipe line of the Texas Company from all of the wells on the Hunsicker-Greene lease from the date at which oil was first run to said pipe line from said lease to January 1, 1918, to be the sum of \$67,257.21, which amount represents the purchase price of the Producers Oil Company's 5/6 interest in the total quantity of oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease between the dates stated and which is shown with greater particularity upon the statement hereto annexed, marked exhibit "A", and made a part of this answer.

Interrogatory No. 19:

Where and in what manner was the oil above mentioned delivered to the purchaser.

Answer to Interrogatory No. 19:

The oil run to the pipe line of The Texas Company from the Hunsicker-Greene lease was delivered to said pipe line from the measuring tanks of Producers Oil Company, situated upon the said lease.

Interrogatory No. 20:

Was not the oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks,

in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company.

Answer to Interrogatory No. 20:

As stated in answer to interrogatory No. 19, the oil delivered to pipe line of The Texas Company was delivered to said pipe line from the measuring tanks of the Producers Oil Company, situated upon said lease and to which tanks said pipe line was connected.

(Interrogatories Nos. 21, 22, 23 and 24 are answered by Mr. T. J. Donoghue and Interrogatories Nos. 25, 26 and 27 are not answered, a motion having been made to strike them out).

Interrogatory No. 28:

How much money was paid as royalty by the Producers Oil Company or The Texas Company to Henry Hunsicker and Charles J. Greene, Jr., defendants herein, out of the proceeds of the sale of oil taken from the land in controversy.

50 Answer to Interrogatory No. 28:

The records in my custody disclose that of the total amount of oil run to the pipe line of The Texas Company, from the lease of Hunsicker and Green to the Producers Oil Company, that there is held by said The Texas Company as a credit balance in oil $1/6$ of said total amount, which said oil so held as a credit balance is held in the proportion of $1/18$ to the credit of Charles J. Greene, Jr., amounting to 5,526.08 barrels of oil of the market value of \$4,459.70 and $2/18$ of said oil to the credit of Henry Hunsicker, amounting to 11,052.14 barrels of oil of the market value of \$8,919.41, as of date Jan. 1, 1918.

Interrogatory No. 29:

Did said wells produce any gas either in merchantable quantities or sufficient in amount for use in the operation of said well, or other wells. In either event, state what disposition was made of such gas and what was its value.

Answer to Interrogatory No. 29:

The records in my custody do not disclose nor have I any information as to whether or not any of the wells situated upon the Hunsicker-Greene lease produced any gas whatsoever.

R. J. DANIEL.

The State of Texas,
County of Harris.

I, H. Tomfohrde, a Notary Public in and for the County of Harris, State of Texas, do hereby certify that the above witness, R. J. Daniel, was by me duly sworn, on oath, to testify to the interrogatories propounded; that the deposition of said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to the said witness and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof, I have hereunto set my hand and official seal, on this 14th day of February, 1918, in the County of Harris, State of Texas.

H. TOMFOHRDE,

(Seal)

Notary Public in and for
the County of Harris.
State of Texas.

My commission expires May 31, 1919.

51 Runs from the Producers Oil Company's Wells on
the Hunsicker & Green Property, Caddo Par-
ish, Louisiana.

Date	Producers' 5/6	Price	Amount
1911			
May	1,153.12	.55	\$ 634.22
June	4,035.28	.5788	2,335.62
July	4,251.34	.60	2,550.80
August	3,910.09	.4802	1,877.63
September	3,120.89	.4899	1,528.92
October	3,565.86	.50	1,782.93
November	2,884.72	.50	1,442.36
December	2,189.17	.50	1,094.58
1912			
January	3,080.87	.5691	1,753.32
February	1,589.18	.72	1,144.21
March	2,620.67	.72	1,886.88
April	1,143.62	.72	823.41
May	1,817.41	.7588	1,379.05
June	382.93	.77	294.85
July	1,213.48	.7901	958.77
August	1,536.97	.80	1,229.58
September	1,528.58	.80	1,222.86
October	1,579.95	.80	1,263.96
November	775.18	.83	643.40
December	1,946.58	.8872	1,727.01
1913			
January	380.92	.9297	354.14
February	386.08	.98	378.36
March	1,746.62	.98	1,711.69
April	1,853.02	.98	1,815.96
May	1,676.32	.98	1,642.79

June	1,448.76	.98	1,419.78
July	1,668.89	.9907	653.37
August	1,866.72	1.014	1,892.85
September	804.49	1.05	844.71
October	1,877.95	1.05	1,971.85
November	761.02	1.05	799.07
December	821.42	1.05	862.49

1914

January	1,578.86	1.04	1,657.80
February	683.17	1.05	717.33
March	761.36	1.05	799.43
April	1,446.26	1.05	1,518.57
May	712.32	1.05	747.94
June	767.16	1.05	805.52
July	821.74	1.00	821.74
August	779.00	.85	662.15
September	780.14	.80	624.11
October	742.64	.80	594.11
November	763.24	.80	610.59
December			

1915

January	624.58	.80	499.66
February	778.14	.80	622.51
March	733.36	.70	513.35
April	747.98	.60	448.79
May	731.34	.60	438.80
June	601.56	.60	360.94
July	.....	
August	708.20	.65	460.33
September	784.94	.75	588.71
October	.....	
November	785.37	1.00	785.37
December	775.51	1.20	930.61

1916			
January	.....	
February	699.92	1.30	909.90
March	554.77	1.55	859.89
April	.....	
May	395.56	1.55	613.12
June	730.25	1.55	1,131.89
July	.....	

52 Runs from The Producers Oil Company's Wells
on the Hunsicker & Green Property, Caddo
Parish, Louisiana.

Date	Producers' 5/6	Price	Amount
1916 (Cont'd)			
August	393.47	.90	\$354.72
September	362.29	.90	326.06
October	.....	
November	709.48	1.00	709.48
December	302.35	1.40	423.29
1917			
January	.....	
February	276.50	1.70	470.05
March	316.18	1.90	600.74
April	310.29	1.90	589.55
May	.....	
June	400.60	1.90	761.14
July	354.53	1.90	673.60
August	.....	
September	.....	
October	352.30	2.00	704.60

November
 December

82,883.46

67,257.21

RJD—EEG
 2/14/18.

Indorsed:—Answer of The Texas Co. to Interrogatories.
 Filed Feb. 15, 1918.

53 United States District Court for the Western
 District of Louisiana, Shreveport, Division.

United States of America

versus

No. 1156

Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
 Company, The Texas Company.

Now comes Producers Oil Company, and files herein
 the answers of said Company, through C. N. Scott, its
 Vice-President, and Otto Hartung, its Chief Accountant,
 to interrogatories propounded by the plaintiff, in the
 above cause, excepting Interrogatories Nos. 25, 26 and
 27, motion having been made to strike them out, and
 excepting Interrogatories Nos. 21, 22, 23 and 24, which
 are answered by T. J. Donoghue, Vice-President of The
 Texas Company.

By Its Attorney,
 HAMPDEN STORY.

54 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America, Complainant.

vs. No. 1156, In Equity.

Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company, The Texas Company.

In the above entitled cause C. N. Scott, Vice-President of Producers Oil Company, appears and answers interrogatories propounded to Producers Oil Company as follows:

Interrogatory No. 21:

What relation existed between the Producers Oil Company and The Texas Company at the time said oil was sold by the Producers Oil Company to The Texas Company?

Answer to Interrogatory No. 21:

The relation that existed between these two corporations was that of contract. There existed during that time a contract or contracts under which The Texas Company agreed to purchase from Producers Oil Company, and Producers Oil Company agreed to sell and deliver, all oil produced in the field where the wells involved in this suit are located, paying therefor the market or posted price. For a time there was a limit as to the minimum amount that The Texas Company undertook to buy and pay for, but this limit was not exercised as to the particular oil in controversy, and The Texas Company under said contract bought and paid for all the oil produced from the wells involved in this litigation.

Interrogatory No. 22:

Is it not a fact that the Producers Oil Company sold all of the oil produced by it to The Texas Company during the time said wells were in operation?

Answer to Interrogatory No. 22:

The Texas Company purchased all the oil produced by Producers Oil Company from the wells involved in this suit during the time the wells were operated by Producers Oil Company. It did not however during this period buy all the oil produced by Producers Oil Company everywhere. There was 55 oil produced by that company and sold to other parties than the Texas Company.

Interrogatory No. 23:

State whether or not said corporations, namely, Producers Oil Company and The Texas Company, were, or not, managed by the same officers or directors, and whether the management of each was not the same at the time of the production and sale of oil from said wells?

Answer to Interrogatory No. 23:

The two companies, Producers Oil Company and The Texas Company, were not managed by the same officers or directors, and the management of each was not the same either before or during the time of the production by Producers Oil Company and the sale of the oil from said wells to The Texas Company, nor for that matter has the management been the same since. The two companies have never been identical either in stock ownership, directors or officers, but have always had a different set of stockholders, directors and officers, and have maintained not only separate complete corporate

organizations, but separate offices, equipment and assets, and this condition existed during the existence of both corporations.

Interrogatory No. 24:

Was not the Producers Oil Company engaged in the drilling of wells and the production of oil, and was not The Texas Company engaged in the manufacture and sale of the oil produced by the Producers Oil Company at the time said wells were drilled and operated?

Answer to Interrogatory No. 24:

The Producers Oil Company was engaged in the production and sale of crude oil, and The Texas Company was engaged in the sale of crude oil, as well as refining and the sale of refined products of crude oil. The Texas Company purchased from Producers Oil Company large amounts of crude oil produced by the latter, as it purchased likewise large amounts of oil produced by other producers, which oil it refined and sold. This

56 was during the time the wells involved in this litigation were drilled and operated by Producers Oil Company.

C. N. SCOTT.

The State of Texas,
County of Harris.

I, H. Tomfohrde, a notary public, in and for the County of Harris, State of Texas, do hereby certify that the above witness, C. N. Scott, vice-president of Producers Oil Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness,

and when completed was read over to the said witness and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States District Court, as set forth in the caption hereof, I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof I have bereunto set my hand and official seal, on this the 14th day of February, A. D. 1918, in the county of Harris, State of Texas.

H. TOMFOHRDE,

Notary Public in and for
Harris County, Texas.

(Seal)

My Commission expires May 31, 1919.

57 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America, Complainant,

versus No. 1156 In Equity.

Henry Hunsicker, Charles J. Greene, Producers Oil
Company, The Texas Company, Defendants.

In the above entitled matter, Otto Hartung, who was up to November 13, 1917, Chief Clerk of the Accounting Department of the Producers Oil Company and who since said date has been Chief Accountant of the Producing Department of the Texas Company appears and answers the interrogatories propounded to the Producers Oil Company (except No. 25, No. 26, and No. 27, a motion having been made to strike them out and except No. 21, No. 22, No. 23 and No. 24, which are answered by Mr. C. N. Scott) as follows:

Interrogatory No. 1:

States whether or not the Producers Oil Company drilled on Lots 2 and 3 of Section 8, T. 20, N. R. 16 W., the wells known as Hunsicker Nos. 1 and 2.

Answer to Interrogatory No. 1:

From information obtained from the records of the Producers Oil Company I find that the Producers Oil Company drilled the wells known as Producers Oil Company Hunsicker No. 1 and No. 2 on its Hunsicker Lease in Section No. 8, Township No. 20, North Range 16 West, Parish of Caddo, Louisiana.

Interrogatory No. 2:

State when the said wells were commenced and when they were completed.

Answer to Interrogatory No. 2:

The records of the Producers Oil Company show that the drilling of the well known as Hunsicker No. 1 was begun May 8, 1920; that said well was not completed as a producing oil well and was a non-producing well; that casing from said well was pulled on or about November 3, 1915; that the drilling of the well known as Hunsicker No. 2 began April 1, 1911, and said well was completed May 20, 1911, as a producing oil well.

58 Interrogatory No. 3:

Did said wells produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause.

Answer to Interrogatory No. 3:

Well No. 1 did not produce oil at all. Well No. 2 was a producing oil well. The interest of the Producers

Oil Company in the total of said oil produced was $\frac{5}{6}$ of said total production, the other $\frac{1}{6}$ representing the royalty; that the $\frac{5}{6}$ interest of the Producers Oil Company in said oil was sold and delivered by it to The Texas Company.

Interrogatory No. 4:

During what period was said wells operated in the production of oil, and when, if at all, did they cease to produce oil.

Answer to Interrogatory No. 4:

Well No. 1 was never operated for the production of oil. Well No. 2 was operated for the production of oil from or about the date of its completion, to-wit, May 20, 1911, up and until the present time and is still producing oil.

Interrogatory No. 5:

State how much oil was extracted and removed by the Producers Oil Company, or any other defendant, from the land in controversy, (a) from the time said wells began producing up to July 1, 1917, and (b) from July 1, 1917, to January 1, 1918.

Answer to Interrogatory No. 5:

That the records of the Producers Oil Company show that there was produced and removed by the Producers Oil Company from the land embraced in the lease of Henry Hunsicker and Charles J. Greene to Producers Oil Company from the beginning of production of Well No. 2 (a) up to July 1, 1917, 98612.07 barrels and (b) from July 1, 1917, to January 1, 1918, 848.20 barrels of oil.

Interrogatory No. 6:

State whether or not the said wells were operated in the production of oil as entities, or in connection with other wells on the same or different tracts of land.

Answer to Interrogatory No. 6:

There was but one well operated in the production of oil located on the land involved in this suit
59 and that was the well known as Hunsicker No. 2. There was another well drilled on adjacent land to the land involved in this suit, known as Hunsicker No. 3. Until Hunsicker No. 3 was drilled and put in operation all the oil produced from Hunsicker No. 2 was treated as an entity. When Hunsicker well No. 3 began producing, the production from Hunsicker No. 2, involved in this litigation, and Hunsicker No. 3, not involved in this litigation, were run together into the same tank. There was run in these tanks oil from no other wells except Hunsicker No. 2 and Hunsicker No. 3.

Interrogatory No. 7:

Was a separate and complete record kept by the Producers Oil Company, or any other defendant, of the oil produced by Hunsicker No. 1 and No. 2. If so, state how said record was kept, and attach to your answers a copy of said record. If your answer is in the negative, explain why such record was not kept.

Answer to Interrogatory No. 7:

As heretofore answered Hunsicker No. 1 was a dry hole, therefore produced no oil. As to Hunsicker No. 2, which produced oil, a separate and complete record was kept of this well by the Producers Oil Company up to the bringing in of Hunsicker No. 3. Hunsicker No. 3 was completed February 21, 1913. After that

date Hunsicker No. 2, involved in this suit, and Hunsicker No. 3, not involved in this suit, were operated jointly and the records were kept jointly. The only reason records of production from the wells were not kept separately was that from an accounting standpoint it was only necessary to keep separate production which represented different ownerships in order that the Producers Oil Company could account for its delivery to the royalty owners of their proportionate part of the oil produced. In the two wells referred to, that is to say, Hunsicker No. 2 and Hunsicker No. 3, the oil was run together and not kept separate because at the time the oil was run, from the standpoint of accounting, it was only thought necessary to be able to show the amount of oil which was due the Producers Oil Company and the amount of oil which was due the lessors who had leased the land upon which both wells were situated. I have no knowledge as to whether any record was kept showing the separate production of the different wells involved by any other defendants.

60 Interrogatory No. 8:

Was a record of any kind kept by the Producers Oil Company, or any other defendants, while said wells were in operation, showing the amount of oil produced therefrom, by the day, week, month, year, or any period. If not, state why no record of the production of such wells were kept.

Answer to Interrogatory No. 8:

This interrogatory has been mainly answered in the answer given to interrogatory No. 7. However, a record was kept by the day, month and year of the oil produced jointly by the two producing wells, one being Hunsicker No. 2, involved in this suit. The reason that

the records were kept as above stated is given in our answer to interrogatory No. 7.

Interrogatory No. 9:

If you have said in answer to the foregoing interrogatories, that no record of any kind was kept of the production of said wells, then state whether there is any way, or method, by which the actual, or approximate, production of said wells may be ascertained. If so, state such method.

Answer to Interrogatory No. 9:

As I have heretofore answered, a record was kept of the production by leases and not as to each well separately on any particular lease, and as to the wells involved in this lease, as heretofore testified to, the production of Hunsicker No. 2, up to the bringing in of Hunsicker No. 3, is actual and accurate and not an approximation. Since said date the production from these two wells have been run together and not kept separately and can only be arrived at by approximation. The method of arriving at such would be to make an analysis of the run tickets and of the production of Hunsicker No. 2 to the date of the bringing in of Hunsicker No. 3, estimating the life of the wells, together with an average approximation of the total decline of production and with personal inquiry of those actually operating said wells at the time said production was mingled.

Interrogatory No. 10:

State whether or not the production of the wells in suit, as given in your answers to the preceding interrogatories, and in the answer of the Producers
61 Oil Company to the bill of complaint herein,
is exact, or is based upon an estimate of any
kind.

Answer to Interrogatory No. 10:

The production of this well, Hunsicker No. 2, the only one involved in this suit, is exact up to the date of January 31, 1913, and from there after that date the production of said well is estimated upon the basis set out in my answer given to the preceding interrogatory.

Interrogatory No. 11:

If said production is based upon an estimate of the quantity of oil produced by Hunsicker No. 1 and No. 2, in connection with other wells not in suit, then state (a) the total production of all wells operated in conjunction with Hunsicker Nos. 1 and 2, (b) where such wells are located, and (c) the names of all such wells.

Answer to Interrogatory No. 11:

As heretofore answered, Hunsicker No. 1 was non-producing. As to Hunsicker No. 2, the production is exact up to January 31, 1913, when Hunsicker No. 3, a well not involved in this suit, was operated jointly with Hunsicker No. 2. In answer to (a), the total production of these two wells from the date they were operated conjunctively, that is of Hunsicker No. 2 and Hunsicker No. 3, was 45312.10 barrels to January 1, 1918. In answer to (b), Hunsicker No. 2 is located on the land involved in this suit and Hunsicker No. 3 is located on lands not involved in this suit, but is upon land immediate adjacent to the land that is involved in this suit and which lands are a part of the Hunsicker Lease. In answer to (c), I have given the names of the wells as Hunsicker No. 2 and Hunsicker No. 3.

Interrogatory No. 12:

If the production of Hunsicker Nos. 1 and 2 as given in the answer of the Producers Oil Company to the bill

of complaint, and in your answers to the preceding interrogatories, is estimative and not exact, then state the manner in which you arrived at, or figured, the production of such wells.

Answer to Interrogatory No. 12:

As heretofore stated, Hunsicker No. 1 was a non-producer. As to Hunsicker No. 2, the production is exact up to January 31, 1913, and from that date it is estimated and the manner in which the estimation is arrived at or figured is as stated in answer to interrogatory No. 9.

62 Interrogatory No. 13:

What was the initial production of Hunsicker Nos. 1 and 2, and the total production, by months, of said wells during the period of their operation.

Answer to Interrogatory No. 13:

As heretofore answered, Hunsicker No. 1 was a non-producer; that the initial production of Hunsicker No. 2 was reported and our records reflect it to have been 200 barrels per day; this initial production being the estimated production given by the driller at the time of the completion of said well and the total production by months of said well, Hunsicker No. 2, during the period of its operation to January 1, 1918, is shown by months on the statement hereto attached, marked exhibit "A," and made a part of this answer.

Interrogatory No. 14:

State where and from whom the date, or information, relative to the production of said wells, as given in the answer of the Producers Oil Company to the bill of complainant herein, was obtained. Give names and ad-

dressess of persons from whom such data, or information was secured.

Answer to Interrogatory No. 14:

The data or information relative to the production of Hunsicker No. 2 were obtained from the oil records of the Producers Oil Company, the run tickets, together with data worked up by Mr. W. A. Hammann of the Shreveport office of the Producers Oil Company, who obtained information as to the production of Hunsicker No. 2 and Hunsicker No. 3 from the field records and from personal inquiry from those who are directly in charge of the operations of said wells.

Interrogatory No. 15:

What was the total value of the oil produced by the wells known as Hunsicker Nos. 1 and 2. State whether the value as given by you in your answer to this question is exact or approximate.

Answer to Interrogatory No. 15:

As stated well No. 1 was a non-producer. As to Hunsicker No. 2, the total value of the oil produced, based upon the approximation of its production is \$41,199.23 up to January 1, 1918. The value is substantially exact, the only approximation being the amount of the oil produced as reflected by previous answers.

63 Interrogatory No. 16:

Was not the oil taken from said wells sold by the Producers Oil Company to the Texas Company.

Answer to Interrogatory No. 16:

The oil taken from Hunsicker No. 2 was sold by the Producers Oil Company to The Texas Company.

Interrogatory No. 17:

What was the total price received by the Producers Oil Company for all the oil produced by the well in controversy.

Answer to Interrogatory No. 17:

The total price received by the Producers Oil Company for its 5/6 production of the oil produced from Hunsicker No. 2 was \$41,199.23.

Interrogatory No. 18:

What was the total price received by the Producers Oil Company for all the oil produced by Hunsicker Nos. 1 and 2, and any other wells that may have been operated in connection with said wells.

Answer to Interrogatory No. 18:

The total price received by the Producers Oil Company from the Hunsicker Lease for its 5/6 proportion, both from wells involved in this suit and wells that were not involved in this suit, which has been heretofore answered, including Hunsicker No. 2 and Hunsicker No. 3; Hunsicker No. 3 being the only well operated in connection with Hunsicker No. 2, is \$65,972.37, as of January 1, 1918.

Interrogatory No. 19:

Where and in what manner was the oil above mentioned delivered to the purchaser.

Answer to Interrogatory No. 19:

The oil produced, as testified to in these answers, was delivered by the Producers Oil Company from its measuring tanks to the purchaser, and which measuring tanks are situated on the lease.

Interrogatory No. 20:

Was not the oil delivered to the purchaser on the land where it was produced by transfer from a tank, or tanks, in which the oil was stored to a pipe line, and did not said pipe line belong to The Texas Company.

64 Answer to Interrogatory No. 20:

The oil produced from Hunsicker Wells No. 2 and No. 3 was delivered to the purchaser from the measuring tanks of the Producers Oil Company situated on the Hunsicker lease, and which measuring tanks were connected to the gathering lines of The Texas Company pipe line system.

Interrogatories No. 21, No. 22, No. 23 and No. 24 are answered by Mr. C. N. Scott and interrogatories No. 25, No. 26 and No. 27 are not answered for the reason that a motion has been made to strike them out.)

Interrogatory No. 28:

How much money was paid as royalty by the Producers Oil Company or The Texas Company to Henry Hunsicker and Charles J. Greene, Jr., defendants herein, out of the proceeds of the sale of oil taken from the land in controversy.

Answer to Interrogatory No. 28:

We have no record of any money being paid as royalty either by The Texas Company or the Producers Oil Company to Charles J. Greene or Henry Hunsicker, lessors or royalty owners.

Interrogatory No. 29:

Did said well produce any gas either in merchantable quantities or sufficient in amount for use in the operation of said wells, or other wells. In either event, state

what disposition was made of such gas and what was its value.

Answer to Interrogatory No. 29:

The wells involved in this suit did not produce any gas of any kind, either in merchantable quantities or of an amount that could have been used by either of the wells.

OTTO HARTUNG.

65 The State of Texas,
 County of Harris.

I, H. Tomfohrde, a Notary Public in and for the County of Harris, State of Texas, do hereby certify that the above witness, Otto Hartung, who was up until November 13, 1917, Chief Clerk of the Accounting Department of the Producers Oil Company, and who since said date has been Chief Accountant of the Producing Department of The Texas Company, was by me duly sworn, on oath, to testify to the interrogatories propounded; that the deposition of said witness was reduced to writing by me on the typewriter, and when completed read over to the said witness and subscribed by him in my presence; that the said depositions were taken in pursuance of an order of the United States District Court, as set forth in the caption hereof. I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof, I have hereunto set my hand and official seal, on this 14th day of February, 1918, in the County of Harris, State of Texas.

H. TOMFOHRDE.

(Seal)

Notary Public in and for the County
of Harris, State of Texas.

My Commission expires May 31, 1919.

66

EXHIBIT "A" to Answer to Interrogatory No.
13 Statement of Oil Run From Hunsicker
Well No. 2 Exact From Completion of Said
Well to January 31, 1913, and Estimated
From Said Date to January 1, 1918.

1911.

May	1 383 75
June	4 842 34
July	5 101 61
August	4 692 11
September	3 745 07
October	4 279 03
November	3 461 66
December	2 627 00

1912.

January	3 697 04
February	1 907 02
March	3 144 80
April	1 372 34
May	2 180 89
June	459 52
July	1 456 18
August	1 844 36
September	1 834 29
October	1 895 94
November	930 22
December	2 335 90

1913.

January	457 10
February	251 10
March	897 07
April	798 28
May	766 41
June	634 58
July	636 87

August	907 26
September	395 81
October	869 87
November	390 86
December	366 68
1914.	
January	551 33
February	163 14
March	106 89
April	102 40
May	225 66
June	193 32
July	339 21
August	514 14
September	536 42
October	427 77
November	479 95
December	.....
1915.	
January	410 72
February	471 54
March	437 37
April	542 13
May	480 04
June	358 05
July	.....
August	404 48
September	454 95
October	.....
November	467 47
1915.	
December	401 09
1916.	
January	.....
February	388 03
March	253 64

April	.....
May	150 95
June	208 56
July	.....
August	175 65
September	127 81
October	.....
November	207 73
December	98 32
1917.	
January	.....
February	78 97
March	81 19
April	76 33
May	.....
June	87 97
<hr/>	
Total from beginning to	
July 1st, 1917	70 566 18
1917.	
July	287 60
August	.....
Sept.	.....
October	216 88
November	.....
December	.....
<hr/>	
Total from July 1, 1917, to	
Jan. 1, 1918	504 48
<hr/>	
Grand Total	71 070 66

Indorsed:—Answer of Producers Oil Co. to
Interrogatories. Filed Feb. 15, 1918.

68 United States District Court, for the Western
 District of Louisiana, Shreveport Division.

 United States of America, Complainant,
 vs. No. 1157 In Equity.
 Henry Hunsicker, Charles J. Green, Jr., Producers Oil
 Company, The Texas Company.

Now comes Producers Oil Company, and files herewith the answers of said Company, through C. N. Scott, its Vice-President, to the interrogatories Nos. 25, 26, and 27, propounded by the plaintiff in the above cause, and which interrogatories were not previously answered because of a motion having been made to strike them out. Said motion having been overruled, said defendant, Producers Oil Company, now makes answer thereto in compliance with the order of this Honorable Court.

By Its Attorney,
 HAMPDEN STORY.

69 United States District Court for the Western
 District of Louisiana, Shreveport Division.

 United States of America, Complainant,
 vs. No. 1156 In Equity.
 .. Henry Hunsicker, Charles J. Green, Jr., Producers Oil
 Company, The Texas Company.

In the above entitled cause, C. N. Scott, Vice-President of Producers Oil Company, appears and answers interrogatories propounded to Producers Oil Company, and which had not been previously answered for the reason that a motion had been made to strike them out. Said motion having been overruled by the Court, answers are made as follows:

Interrogatory No. 25:

What are the principal products manufactured from petroleum or crude oil?

Answer to Interrogatory No. 25:

Producers Oil Company was not engaged in the manufacture of products from petroleum, but only in the production and sale of crude oil. The oil produced from the wells involved in this litigation, I assume, from the location of the wells in controversy, was oil of a high gravity. I know from a general knowledge of the oil business that the principal products manufactured from such crude oil would be gasoline and burning oils. As to what was actually done with the oil in litigation I have no knowledge.

Interrogatory No. 26:

State the total value, either exactly, if you know, or approximately if you do not know positively, of the products manufactured by The Texas Company from the oil taken from the land in controversy.

70 Answer to Interrogatory No. 26:

I have no knowledge whatsoever of what products were manufactured from the oil taken from the land in controversy, nor for that matter, whether The Texas Company manufactured it at all. Therefore, I can not state the value, or approximately the value, of such products.

Interrogatory No. 27:

State to what extent, if any, the Producers Oil Company participated in the profits derived from the manufacture of the oil taken from the land in controversy, and the amount so received by it from such profits.

Answer to Interrogatory No. 27:

Producers Oil Company did not participate in the profits derived from the manufacture of the oil taken from the land in controversy, and received no amounts from such products.

C. N. SCOTT.

71 State of Texas,
County of Harris.

Be it known, that I, H. Tomfohrde, a Notary Public in and for the County of Harris, State of Texas, do hereby certify that the above witness, C. N. Scott, vice-president of Producers Oil Company, was by me duly sworn on oath to testify to the interrogatories propounded; that the deposition of the said witness was reduced to writing by me on a typewriter in the presence of said witness, and when completed was read over to said witness and subscribed by him in my presence; that the said deposition was taken in pursuance to an order of the United States District Court, as set forth in the caption hereof.

I further certify that I am not of counsel or interested in any manner in this case.

In witness whereof I have hereunto set my hand and official seal, on this the 6th day of March, A. D. 1918, in the County of Harris, State of Texas.

(Seal H. TOMFOHRDE,
Notary Public in and for Harris
County, Texas.

Indorsed:—Answers of Producers Oil Co. to Interrogatories Propounded. Filed Mar. 9, 1918.

8

9

72 United States of America, Complainant,
vs. No. 1156 In Equity.
Henry Hunsicker, et al., Defendants.

Now into Court comes Chas. J. Greene, Jr., one of the defendants in the above numbered and entitled cause, and in obedience to the order of Court, makes answer to the Interrogatory propounded to him herein, as follows, to-wit:

For answer to Interrogatory Number 30, he shows that he has never had a settlement with either the Producers Oil Company or with the Texas Company; that, in making this answer he relies upon information furnished him by the said Company through its proper employees; that, he is informed and believes that there has been a total royalty of sixteen thousand five hundred seventy-eight and 22/1000 barrels; that this represents a one-sixth royalty which is owned by himself and Henry Hunsicker; that he is the owner of one-half of a part thereof, and of one-third of the balance, but, at this time, he is unable to state the exact number of barrels in which he is so interested; that he is informed that the total value of the royalty is thirteen thousand, three hundred seventy-nine dollars and eleven cents, the said value being as of the dates of the run.

Further answering Interrogatory Number 30, he shows that the answer of the two Companies mentioned above, to the interrogatories propounded to them will give in greater detail the information sought to be obtained from this defendant, and reference is made by him to the said answers, for a more detailed statement.

CHAS. J. GREENE, Jr.

Chas. J. Greene, Jr., being sworn, said:

That the facts stated in the answer to the interrogatory set forth above, are true and correct, except those given on information, and these, he believes to be true.

CHAS. J. GREENE, JR.

Sworn to and subscribed before me this day of February, 1918.

(Seal)

D. W. BREAZEALE,
Notary Public.

73 Indorsed:—Answer of Chas. J. Greene, Jr., to Interrogatories. Filed Feb. 20, 1918.

74 United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1156 In Equity.
Henry Hunsicker, et al.

Now into Court comes Producers Oil Company, one of the defendants in the above entitled and numbered cause, and moves this Honorable Court to dismiss the bill of complaint herein filed, on the grounds, as follows, to-wit:

1.
Misjoinder;
- 2.

Insufficiency of facts to constitute a valid cause of action in equity;

3.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules;

4.

That the verification attached to said bill of complaint is not sufficient;

5.

That the defendants named in said bill of complaint are not charged with being joint trespassers, and that the causes of action set forth are multifarious.

Wherefore, defendant prays that this motion be allowed, and plaintiff's suit be dismissed at its cost, and for all necessary orders in the premises.

HAMPDEN STORY,

Attorney for Producers
Oil Company.

Indorsed:—Motion to Dismiss on the Part of the Producers Oil Company. Hampden Story, Atty. Filed Feb. 26, 1918.

75 Western District Court of Louisiana.

United States of America, Complainant,
vs. No. 1156 In Equity.
Henry Hunsicker, et al., Defendants.

Now into Court, through undersigned counsel, comes Chas. J. Greene, Jr., one of the defendants in the above entitled and numbered cause, and moves the Court to dismiss the bill herein for the following reasons, to-wit:

1.

Misjoinder of parties, defendant;

2.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules.

3.

That the facts alleged in the said bill do not show a valid cause of action in equity.

4.

That the verification of the said bill of complaint is insufficient.

5.

That the defendants named in the said bill are not charged with being joint trespassers, and that the causes of action set forth are multifarious.

Wherefore, he prays that the said bill be dismissed. He further prays for all necessary orders and for equitable and general relief.

S. M. COOK,
Solicitor for C. J. Greene, Jr.

Indorsed:—Motion to Dismiss on the Part of C. J. Greene. Filed Feb. 27, 1918.

76 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1156 In Equity.
Henry Hunsicker, et al.

Now into Court comes The Texas Company, one of the defendants in the above entitled and numbered cause, and moves this Honorable Court to dismiss the bill of complaint herein filed as to it, on the grounds, as follows, to-wit:

1.

Misjoinder of parties defendant;

2.

Insufficiency of facts to constitute a valid cause in equity;

3.

That the said bill of complaint is insufficient under Rule 25 of the Equity Rules;

4.

That the verification attached to said bill of complaint is not sufficient;

5.

That this defendant is not charged, in said bill of complaint, as a joint trespasser, extracting the oil and gas from the land, in controversy, nor with having com-

mitted trespass thereon, nor with having advised, encouraged or conspired and co-operated to do so, the only allegation in said bill of complaint, in said suit, being substantially and to the effect that this defendant bought and sold the oil so produced from the land, in controversy, from the said Henry Hunsicker and Charles J. Greene, Jr., and the said Producers Oil Company, the other defendants in said suit;

6.

That there is no accounting necessary between it and the plaintiff in any sense to give a Court of Equity jurisdiction on that ground;

7.

That the suit of the plaintiff is one arising in tort, and cannot be converted into one of an accounting, being a cause of trespass, or tort, for which it is
77 not liable.

Wherefore, defendant prays that this motion be allowed and plaintiff's suit be dismissed at its costs, and for all necessary orders in the premises.

HAMPDEN STORY,

Attorney for The Texas
Company.

Indorsed:—Motion to Dismiss on the Part of the Texas Company, Hampden Story, Atty. Filed Feb. 26, 1918.

United States District Court, Western District of
Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S.
Judge.

United States of America,

vs. No. 1156 In Equity.

Henry Hunsicker, et als.

In this cause, now into Court, comes Charles J. Greene,
Jr., appearing herein through his Solicitor, Mr. S. M.
Cook, and files his Motion to Dismiss herein.

Thereupon, this cause came on to be heard upon the
Motions to Dismiss and also upon the Motions to Strike
Out Certain Interrogatories, Mr. Robert A. Hunter,
Special Assistant to the Attorney General, appearing
as Solicitor for the Complainant herein, and Judge
Hampden Story and Mr. S. M. Cook, appearing as So-
licitors for the defendants. The said Motions were ar-
gued and submitted, and thereupon, the Court over-
ruled the Motions to Dismiss, to which ruling of the
Court defendants reserved bill of exception—the Motion
to strike out certain interrogatories was sustained as to
The Texas Company, with leave for the Complainant
to renew said interrogatories at such time as it may
seem proper—the Motion to Strike out certain inter-

rogatories being overruled as to the Producers Oil Company.

79

Equity Journal, Vol. 1.

United States District Court, Western District of
Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S.
Judge.

United States of America,

vs. No. 1156 In Equity.

Henry Hunsicker, et al.

This cause came on this day for trial upon the Pleas
filed by defendants, evidence was offered and the mat-
ter argued by counsel—Robert A. Hunter, Esq., Spec-
ial Assistant to the Attorney General, appearing as
Solicitor for Complainant, and Mr. S. L. Herold appear-
ing for defendants,—and the matter was submitted and
taken under advisement by the Court.

Equity Journal, Vol. 1.

United States District Court, Western District of
Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Hon. Rufus E. Foster, U.
S. Judge.

United States of America,
vs. No. 1156 In Equity.
Henry Hunsicker, et al.

In this case, which had heretofore been argued and
submitted, counsel for both complainant and defendants
being present in open Court, Decision is now orally
rendered by the Court, overruling the Pleas filed herein
by defendants, with right reserved to defendants to
renew said pleas at the hearing on the merits of the
case.

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United States District Court, Western District
of Louisiana.

United States,
vs. No. 1156.
Henry Hunsicker, et al.

This case now being at issue, the Court considering
that the services of a Master are necessary to aid the
Court and economize its time, and for the purpose of

expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

81

PLFF H.

R. B. Cook, Stenographer.

Summary.

(Production estimated to Jan. 1, 1918).

	Barrels	Amount.
Total oil run from well No. 2 for the times said well was operated separately	57,600.56	\$36,371.54
Oil apportioned to Well No. 2 for the time wells Nos. 2 and 3 were operated jointly ...	18,965.31	19,405.35
Total estimated production from well No. 2	76,565.87	\$55,776.89

Approximated royalty to Henry Hunsicker and C. J. Greene, Jr., and held in suspense by The Texas Co. as shown by its decision filed	9,294.48	
Approximated amount of Producers Oil Co. interest in production from Well No. 2	46,482.41	55,776.89
Approximated amount of Producers Oil Co.'s interest ..		46,482.41
Cost of drilling well No. 2 as shown by statement Exhibit "D" attached to and filed with P. O. Co.'s answer ..	8,066.97	
Cost of operating well No. 2 as shown by statement hereto attached	16,347.46	24,414.43
	<hr/> 24,414.43	
Estimated net proceeds from well No. 2 after deduction of costs for drilling and operation		\$22,067.98

Filed Jan. 21, 1919.

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"PLAINTIFF A."

1156

Department of the Interior,
General Land Office,
Washington, D. C.

January 16, 1918.

I hereby certify that the annexed copy of office letter dated June 1, 1911 is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

In reply please refer to 156445 "N" HGP.

1 Inc.
1 x R&R.

Department of the Interior,
General Land Office,

Washington, June 1st, 1911.

Drilling for Oil.

Withdrawal under act June 25, 1910 (38 Stat., 847).

Hon. Murphy J. Foster,
The Senate.

Sir:

Acknowledging the telegram of your correspondent, Henry Hunsicker, Shreveport, which is herewith returned, I have the honor to advise:

Township 20, north, range 16, west, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation, by order of the Secretary dated December 15, 1908.

The township was included in Executive order of July 2, 1910, which ratified the withdrawal of December 15, 1908, and withdrew the lands, under the act of June 25, 1910 (36 Stat., 847), from settlement, location, sale or entry and reserved the same for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Mr. Hunsicker states in his telegram:

83 Land in fractional section eight township twenty, north, range sixteen, west, La. Meridian, operations commenced May 8, 1910.

The lands being in a state of withdrawal under order of December 15, 1908, at the time of commencement of operations looking to the discovery of oil or gas and continuous from Dec. 15, 1908, to the present time, upon the statement of facts presented in the telegram the operators would have acquired no rights such as could be recognized under the terms of the withdrawals, December 15, 1908, or July 2, 1910, nor do the facts related bring the operators within the terms of the first proviso to the act of June 25, 1910, *supra*.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

Filed Jan. 21, 1919.

84 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1156 In Equity.
Henry Hunsicker, et al.

Now comes the defendant, The Texas Company, and excepts to the report of the Honorable E. H. Randolph, Special Master in Chancery, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master stated and certified that the defendant was liable to the United States, plaintiff herein, in solido, (page 5 of Report, Class "A") with the Producers Oil Company, for Thirty-one Thousand Three Hundred Sixty-Two and 46/100 (\$31,362.46) Dollars and in solido with the said Henry Hunsicker and Charles J. Greene, and Producers Oil Company for Nine Thousand Two Hundred Ninety-four and 48/100 (\$9,294.48) Dollars, royalties received or which the said Henry Hunsicker and Charles J. Greene were entitled to receive, instead of stating and certifying that, as a marketing company, taking the oil produced from the land in controversy, The Texas Company was not liable, or in any event it could not be held liable in solido therefor, for said royalty.

2.

That the said Master, in said report, which is excepted to, should have stated and certified that there was no allegation in the pleadings, or any proof in support thereof, if alleged, holding The Texas Company liable as a joint trespasser, or as having acted in con-

cert with the Producers Oil Company, and with the Producers Oil Company, Charles J. Greene and Henry Hunsicker, or with any of them, in extracting the oil from the land in controversy.

3.

That it further excepts to said report of the Master, in stating and certifying that interest, on the amount aforesaid, against it and the Producers Oil Company, Charles J. Greene and Henry Hunsicker, should be allowed at five per cent per annum thereon from 85 the filing of said report, instead of stating and certifying that said The Texas Company, if liable, Producers Oil Company, Charles J. Greene and Henry Hunsicker, if held in solido, for the respective amounts, are liable for interest from the date of judgment on the amounts set out in said report, in case the United States is successful in this cause.

HAMPDEN STORY,

Solicitor for The Texas Company.

Indorsed: Exception to Report of Special Master in Chancery. Hampden Story, Solicitor for The Texas Company. Filed Jan. 24, 1919.

B.

86 In the District Court of the United States
for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1156 In Equity.

Henry Hunsicker, et al., Defendants.

Now comes Henry Hunsicker, one of the defendants herein, and excepts to the report of E. H. Randolph,

Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at such time so withdrawn.

2.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against him, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in his favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant,
Henry Hunsicker.

Indorsed:—Exceptions of Henry Hunsicker to the Report of the Special Master. Filed Jan. 30, 1919.

B

87 In the District Court of the United States, for
 the Western District of Louisiana.

United States of America, Plaintiff,
 vs. No. 1156 In Equity.
Henry Hunsicker, et al., Defendants.

Now comes the Producers Oil Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at such date so withdrawn.

2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered, as to the liability which the Master certifies as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and said royalty owners.

3.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date the same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

HAMPDEN STORY,

Solicitors for Producers Oil Co.

88 Indorsed:—Exceptions of Producers Oil Co.
to the Report of the Special Master, Filed Jan.
30, 1919.
B

89 In the District Court of the United States, for
the Western District of Louisiana.

United States of America,

vs.

No. 1156.

Henry Hunsicker, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the

Secretary of the Interior, withdrew the land in controversy from settlement, entry, or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibit "A", "B," "C," "D," "E," "F 1, 2, 3, 4, 5, "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S", "T," which said exhibits were by agreement of counsel (record, p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 20 N., R. 16 West, and prohibited mineral locations on the public
90 lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

2. According to the Master's report, the mineral location in this cause was made March 20, 1910. The only well that produced oil— Well No. 2—was begun April 1, 1911, and completed May 20, 1911, as a producing oil well (see answer of the Producers Oil Co. to interrogatory No. 2). Well No. 1, which, according to the contention of defendants, was commenced in May, 1910, did not produce either oil or gas in merchantable quantities, nor was it utilized in any way by said Company (see answer of Producers Oil Co. to interrogatory No. 29).

Plaintiff avers that the drilling of said wells and the removal of oil from the said land, by the defendants, were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That the defendants trespassed upon said land with full knowledge of the withdrawal orders of December 15, 1908, and July 2, 1910, and no work of any kind was done upon the tract embraced in the mineral location until long after the issuance of the withdrawal order of December 15, 1908, (testimony of Henry Hunsicker, record 60). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

- | | | |
|-----|--|--------------|
| 91 | (a) Against the Producers Oil
Company and the Texas Co., in
solido, in the sum of
being total value of production of oil
from said land, less royalties, all as
shown by the Master's report. | \$46,482.41, |
| (b) | Against the Producers Oil Co., The
Texas Company, Charles J. Greene, Jr.,
and Henry Hunsicker, in solido, in the
sum of | 9,294.48, |

being amount of royalty paid out of the production by the said Producers Oil Co. and Texas Company to Charles J. Greene, Jr., and Henry Hunsicker, as shown by the Master's Report.

Total 55,776.89.

Said sums aggregating \$55,776.89, being the total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

92 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1156 in Equity.
Henry Hunsicker, Charles J. Greene, Junior, Producers Oil Company, Texas Company.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration

thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, lots numbers two and three (2 and 3) of section eight (8), in township twenty (20), north of range sixteen (16) west, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the mineral locations of date March 20, 1910, recorded March 22, 1910, in Book 59, page 216, made by defendants, Henry Hunsicker and Charles J. Greene, Junior, and the lease executed by the said defendants to the Producers Oil Company, March 28, 1910, by act recorded in Conveyance Book 67, pages 621 and 622, said instruments having been recorded on the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly, the above described property, and, to that extent, the said mineral locations and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Henry Hunsicker, Charles J. Greene, Junior, Producers Oil Company, and the Texas Company, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Producers Oil Company and the Texas Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Thirty-one Thousand Three Hundred and Sixty-two and 46/100 (\$31,362.46) Dollars, together with five percent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Producers Oil Company, the Texas Company, Charles J. Greene, Junior, and Henry Hunsicker, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the sum of Nine Thou-

sand Two Hundred and Ninety-four and 48/100 (\$9,294.48) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

94 VIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

IX. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court

in and for the Western District of Louisiana, in the sum of Five Thousand (\$5000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money,

oil or other property that may come into his hands as receiver. The said receiver shall sur-

render possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

X. That the said defendants be, and they are hereby condemned and ordered to pay all the costs of this suit.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Decree. Filed August 12, 1919.

96 United States District Court for the Western
District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1156 In Equity.

Henry Hunsicker, Charles J. Greene, Jr., Producers
Oil Company and The Texas Company, Defendants.

To the Honorable, the Judge of the District Court of
the United States, for the Western District of Louisiana,
sitting within and for the Shreveport Division:

The above named defendants, feeling aggrieved by the
decree made and entered in this cause on the 4th day of
August, 1919, do hereby appeal from said decree to the
Circuit Court of Appeals for the Fifth Circuit, for the
reasons specified in the assignment of errors which is
filed herewith.

And they pray that their appeal be allowed with
supersedeas, and that citation issue as provided by law;
and that a transcript of the record, proceedings, documents,
and papers upon which said decree was based,
duly authenticated, may be sent up to the said United
States Circuit Court of Appeals for the Fifth Circuit,
sitting at New Orleans, in the State of Louisiana.

And they further pray that proper orders touching
the security to be required to perfect their appeal, be
made.

And desiring to supersede the execution of said
decree, petitioners here tender bond in the amount as the

Court may require for such purpose, and pray that with the allowance of their appeal, a supersedeas be issued.

THIGPEN & HEROLD,
Solicitors for Henry Hun-
sicker.

S. M. COOK,
Solicitor for Charles J.
Greene, Jr.

HAMPDEN STORY,
Solicitor for Producers Oil Com-
pany and The Texas Company.

97

ORDER.

The petition is granted, and the appeal is allowed, and shall operate as a supersedeas, upon petitioners filing a bond in the sum of Sixty-one Thousand and no/100 Dollars, (\$61,000.00) with sufficient surety, conditioned as required by law.

RUFUS E. FOSTER, Judge.

Sept. 3, 1919.

Indorsed:—Petition and Order for Appeal. Filed Sept. 25, 1919.

98 United States District Court, for the Western
 District of Louisiana, Shreveport Division.

 United States of America, Plaintiff,
 vs. No. 1156 In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
 Company, and The Texas Company, Defendants.

Now come each and all of the defendants in the above cause, by their respective solicitors, Thigpen & Herold, Sidney M. Cook, and Hampden Story, and say that the decree entered in the above cause on the 4th day of August, 1919, is erroneous, unjust and prejudicial to the defendants, and in connection with their petition for an appeal, and for specification of said errors, show:

I.

That the Court erred in holding that the order of the President of the United States of America, of date December 10, 1908, and by and through the Secretary of the Interior, precluded the defendants, Henry Hunsicker and Charles J. Greene, Jr., from making mineral locations on the lands in controversy.

II.

That the Court erred in holding that the lands in controversy, on which the defendants made mineral locations under the laws of the United States, had been withdrawn from mineral location, and that they were embraced in the said withdrawal order of December 10, 1908.

III.

That the Court erred in condemning these defendants for the value of any oil produced from the premises in controversy.

Wherefore, defendants pray that the said decree entered by the United States District Court for the Western District of Louisiana, be reversed.

THIGPEN & HEROLD,
Solicitor for Henry Hunsicker.

S. M. COOK,
Solicitor for Charles J. Greene, Jr.

HAMPDEN STORY,
Solicitor for Producers Oil Company and The Texas Company.

99 Indorsed:—Assignment of Errors. Filed Sep.
25, 1919.

B

100 SUPERSEDEAS BOND ON APPEAL.

United States District Court for the Western District
of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1156, In Equity.
Henry Hunsicker, Charles J. Greene, Jr., Producers Oil
Company and The Texas Company, Defendants.

Know all men by these presents: That we, Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company and The Texas Company, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above numbered and entitled cause, in the full sum of Sixty-one Thousand and no/100 Dollars (\$61,000.00) for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this, the 30 day of August, A. D. 1919.

The condition of the above obligation is such that,

Whereas, on the 4th day of August, 1919, in the District Court of the United States, for the Western District of Louisiana, in a suit pending in that Court, wherein the United States of America, was plaintiff and Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, and The Texas Company were defendants, numbered on the Equity Docket of said Court as 1153, a decree was entered and signed against the said Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, and The Texas Company; and

Whereas, the said Henry Hunsicker, Charles J. Green, Jr., Producers Oil Company, and The Texas Company having obtained an appeal with supersedeas, to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, therefore, if the said Henry Hunsicker, Charles J. Greene, Jr., said Producers Oil Company and said The Texas Company shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

101

HENRY HUNSICKER,
CHARLES J. GREENE, JR.,
By S. M. COOK, Atty. at Law.
THE TEXAS COMPANY,
By HAMPDEN STORY, Atty. at Law.
PRODUCERS OIL COMPANY,
By HAMPDEN STORY, Atty. at Law.
Principals.

(Seal)

....., Surety.
THE UNITED STATES FIDELITY & GUARANTY CO., OF
MARYLAND,
By SAM N. WALKER,
Attorney in Fact.

Approved this 3 day of Sept., 1919.
RUFUS E. FOSTER, Judge.

Indorsed:—Supersedeas Bond on Appeal. Filed Sept. 25, 1919.

102 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America,

vs. No. 1156, In Equity.

Henry Hunsicker, et al.

To the Honorable, the Judge of the District Court of
the United States, for the Western District of Lou-
isiana:

Now into this Honorable Court comes the United
States of America, plaintiff, in the above numbered and
entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final
decree in said cause, from which the defendants herein
have appealed, and that in said decree there was, in
part, error greatly to the prejudice and injury of plain-
tiff, as will more fully appear by the assignment of er-
rors filed herewith. Plaintiff desires to take a cross
appeal from said decree to the United States Circuit
Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be
allowed to plaintiff in this cause, from this Court to
the United States Circuit Court of Appeals for the Fifth
Circuit, and that proper orders for the allowance
of such appeal may be made by this Court.

ROBERT A. HUNTER,

Special Assistant to the Attor-
ney General.

ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appel herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

103 ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

United States of America,
vs. No. 1156 In Equity.
Henry Hunsicker, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Producers Oil

Company, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the

United States to protect the public interest and
104 to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court further erred in allowing the said counterclaim and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from said lands because the said well was drilled by said defendant with full knowledge of said withdrawal orders, and it was, therefore, a trespasser in bad faith.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct

from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim herein.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:

105 Plaintiff's Petition for Cross Appeal, Order
thereon, and Assignment of Errors. Filed Nov.
12, 1919.

106

STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1156.

Henry Hunsicker, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1, 154, 1159, 1168, 1170 and 1171, were consolidated in the District Court for trial with the case entitled United States v. Sam. Mason, et al., No. 1172 on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered
107 by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendants, as alleged in the bill of complaint, and that at the time said location was made, the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time, as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of complaint.
2. Answer of Henry Hunsicker.
3. Answer of Texas Company.
4. Answer of Producers Oil Company.
5. Plaintiff's reply to setoff and counterclaim.

6. Answer of Charles J. Greene, Jr.
7. Amended answer of Producers Oil Company.
8. Interrogatories propounded by plaintiff to defendants.
9. Answer of The Texas Company to interrogatories.
10. Answer of Producers Oil Company to interrogatories.
11. Answer of Charles J. Greene, Jr., to interrogatories.
12. Motion to dismiss on the part of the Producers Oil Co.
13. Motion to dismiss on the part of C. J. Greene, Jr.
14. Motion to dismiss on the part of The Texas Company.
15. Order of Court, overruling the motions to dismiss and sustaining motions to strike out certain interrogatories.
16. Minutes of Court showing overruling of pleas of defendants.
17. Order appointing E. H. Randolph, Special Master in Chancery.
18. Statement prepared by James W. Neal, Special Agent of the General Land Office, and

identified by him, showing quantity and value of oil, royalties paid, costs of drilling and operating well, together with all other information given in said statement, marked plaintiff's exhibit H, omitting the fifty-one typewritten pages thereto annexed, which give in detail the items summarized in said exhibit.

19. Letter from the Commissioner of the General Land Office to Murphy J. Foster, marked Plaintiff's Exhibit A.

20. Exceptions of the Texas Company to Master's report.

21. Exceptions of Henry Hunsicker to Master's report.

22. Exceptions of Producers Oil Co. to Master's report.

23. Exceptions of plaintiff to Master's report.

24. Final decree.

25. Defendant's petition for appeal, and order thereon.

26. Assignment of errors.

27. Supersedeas bond on appeal.

28. Plaintiff's petition for cross appeal, order thereon and assignment of errors.

30. This stipulation.

Thus done and signed, this 12th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

COOK and COOK,
HAMPDEN STORY,
THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

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CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one hundred and eight pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is plaintiff and Henry Hunsicker, et al., are defendants, No. 1156 In Equity, on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana,—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk, U. S. District Court, for the Western District of Louisiana.

Citations omitted from the printed record, being filed in the Original.

• • • • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes February 24, 1921.

No. 3542.

HENRY HUNSICKER et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees,

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of *Mason, et al., v. United States*, Ms. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3542.

HENRY HUNSICKER et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

In Equity.

No. 3542.

HENRY HUNSICKER, CHARLES J. GREENE, JR., PRODUCERS OIL COMPANY, and The Texas Company, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable Judges of the United States Circuit Court of Appeals, Fifth Circuit:

The above Appellants and Cross-Appellees, conceiving themselves aggrieved by the decree made and entered in said cause, on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is herewith annexed, and made a part hereof, and that their appeal be allowed with supersedeas; that citation issue as provided by law; and that transcript of the record, proceedings,

and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And further, your petitioners pray that, desiring to supersede the execution of said decree, they here tender bond in the amount as the court may require, for such purpose, and pray that with the allowance of the appeal, a supersedeas will be issued.

(Signed)

(Signed)

(Signed)

HAMPDEN STORY,
S. L. HEROLD,
S. M. COOK,
Solicitors.

Order.

The petition is granted, and appeal is allowed, and shall operate as supersedeas upon petitioners filing a bond in the sum of Eighty-three thousand (\$83,000.00) Dollars, with sufficient surety, conditioned as required by law.

Dated 7th day of June, 1921.

(Signed)

R. W. WALKER,
*Judge of the United States Circuit Court
of Appeals, Fifth Circuit.*

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court which refused to deduct, as an expense of operation of The Texas Company, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

(Signed)

S. L. HEROLD,
HAMPDEN STORY,
S. M. COOK,
Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

United States Circuit Court of Appeals.

In Equity.

No. 3542.

HENRY HUNSICKER, CHARLES J. GREENE, JR., PRODUCERS OIL COMPANY, and THE TEXAS COMPANY, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Know all men by these presents, That we, Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, and The Texas Com-

pany, as principals, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above numbered and entitled cause, in the full sum of Eighty-three Thousand (\$83,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, State of Louisiana, on this 7th day of June, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals, Fifth Circuit, in a suit pending in that Court, wherein Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, and The Texas Company were appellants and cross-appellees, and the United States of America was appellee and cross-appellant, numbered on Equity Docket as No. 3542, wherein a decree was entered and signed against the said Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, and The Texas Company; and

Whereas the said Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company and The Texas Company having obtained an appeal with supersedeas, to the United States Supreme Court;

Now therefore, if the said Henry Hunsicker, Charles J. Greene, Jr., said Producers Oil Company and The Texas Company, shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed)

HENRY HUNSICKER,
By S. L. HEROLD,

Atty.

(Signed)

CHARLES J. GREENE, JR.,
By S. M. COOK AND
HAMPDEN STORY,

Attys. at Law.

(Signed)

PRODUCERS OIL COMPANY,
By HAMPDEN STORY,

Atty. at Law.

(Signed)

THE TEXAS COMPANY,
By HAMPDEN STORY,

Principals.

(Signed)

UNITED STATES FIDELITY &
GUARANTY COMPANY,

[SEAL.]

By L. L. BEBOUT,

Its Attorney in Fact.

Approved this 7th day of June, 1921.

(Signed)

R. W. WALKER,
Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 131 to 139 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3542, wherein Henry Hunsicker, and others, are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 130, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company and The Texas Company are Appellants and Cross-Appellees, and the United States of America is Appellee and Cross-Appellant, No. 3542 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Henry Hunsicker and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

[Endorsed:] No. 3542. United States Circuit Court of Appeals, Fifth Circuit. Henry Hunsicker et al., Appellants and Cross-Appellees, vs. United States of America, Appellee and Cross-Appellant. Citation. Filed 13^d day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Endorsed on cover: File No. 28,335. U. S. Circuit Court Appeals, 5th Circuit. Term No. 380. Henry Hunsicker, Charles J. Greene, Jr., Producers Oil Company, et al., appellants, vs. The United States of America. Filed June 28th, 1921. File No. 28,335.

(4273)

THE HISTORY OF THE
 NATION OF THE
 IROQUOIS

BY J. B. HARRIS

NEW YORK: PUBLISHED BY
 J. B. HARRIS, 1854.

NEW YORK:

1854.

(28,348)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 393.

E. G. PALMER, MRS. FANNIE B. HEILPERIN, TUTRIX OF
NATALIE HEILPERIN; PURE OIL OPERATING COM-
PANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN, E. G. PALMER, MRS. FANNIE B. HEILPERIN, Tutrix of Natalie Heilperin, John L. Hargrove, Franklin Oil & Fuel Company, Humphrey Oil Company, Pure Oil Operating Company, and The Standard Oil Company of Louisiana, Appellees.

Be it remembered, That heretofore, to-wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of the said Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3541, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

Plaintiff,

versus

No. 1154 In Equity.

W. W. GREEN, ET AL.,

Defendants.

TRANSCRIPT OF APPEAL.

Taken by the United States of America, Plaintiff, to the
United States Circuit Court of Appeals, Fifth Cir-
cuit, New Orleans, Louisiana.

1 IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE WESTERN DISTRICT
 OF LOUISIANA, SHREVEPORT DIVI-
 SION.

UNITED STATES OF AMERICA,

Plaintiff,

versus.

No. 1154 In Equity.

W. W. GREEN, E. G. PALMER, MRS. FANNIE B.
HEILPERIN, Tutrix of Natalie Heilperin, JOHN
L. HARGROVE, FRANKLIN OIL AND FUEL COM-
PANY, HUMPHREY OIL COMPANY, PURE OIL
OPERATING COMPANY, STANDARD OIL COM-
PANY OF LOUISIANA,

Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert
A. Hunter, Special Assistant to the Attorney General,
acting herein under the direction and by the authority of
the Attorney General of the United States, brings this
bill of complaint against the following defendants:

W. W. Green, a citizen of Louisiana, and a resident
of the City of Carroll, in the Western District of said
State, Shreveport Division;

E. G. Palmer, a citizen of Louisiana, and a resident of
the City of Shreveport, in the Western District of said
State, Shreveport Division;

Mrs. Fannie B. Heilperin, tutrix of Natalie Heilperin,
a citizen of Louisiana, and a resident of the City of Shreve-

port, in the Western District of said State, Shreveport Division;

John L. Hargrove, a citizen of the District of Columbia, and a resident of the City of Washington;

Franklin Oil & Fuel Company, a corporation organized under the laws of the State of Tennessee and domiciled in the City of Washington, District of Columbia;

Humphrey Oil Company, a corporation organized under the laws of the State of Illinois and domiciled in the City of Chicago, Northern District of said State;

Pure Oil Operating Company, a corporation organized under the laws of the State of West Virginia and domiciled in the City of Pittsburg, Pennsylvania, and doing business in the Western District of Louisiana, with L. C. Blanchard of Shreveport, Louisiana, as its duly authorized agent for the service of process; and

2 Standard Oil Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Baton Rouge, Eastern District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secre-

4

tary of the Interior, and is now known and described as Lot Number Three (3) of Section Three (3) and Lots Numbers Four and Five (4 and 5) of Section Four (4), Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Louisiana, containing Twenty-five and ninety-one hundredths (25.91) acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation all of the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1919, the President of the United State, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the pre-

3 vious order of withdrawal of December 15, 1908,
 above set forth, insofar as it affected the land
 described herein, including the same as a part
of Petroleum Reserve Number Four. That such lands so
withdrawn by said order of July 2, 1910, including the
land herein involved, were withdrawn from settlement,
location, sale or entry, and reserved for classification and
in aid of legislation affecting the use and disposal of
petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been va-
cated but both are now in full force and effect, and said
lands above named, including the property involved here-
in, ever since the date of the first withdrawal, December
15, 1908, have not been subject to exploration for oil,
petroleum, gas, or other minerals, or to location or entry
of any kind under the general land laws, or minerals laws,
of the United States.

III.

Plaintiff avers that notwithstanding said orders of with-
drawal, and in violation of the rights of the plaintiff, and
contrary to its laws, and without any valid title, lawful,
right or authority, the defendants herein, in bad faith,
entered upon and took possession of the tract particularly
described in paragraph I hereof, for the purpose of drill-
ing thereon for oil and gas, and did so drill one well
known as "Green No. 1," and did withdraw therefrom
large quantities of oil and gas, the exact amount and value
of which is unknown, all to the great and irreparable in-
jury of plaintiff.

IV.

That on and prior to the dates of the withdrawal or-
ders hereinabove set forth, to-wit: December 15, 1908, and

July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above
 4 set forth, were extracted therefrom under the color of a pretended mineral location made by defendant W. W. Green, who pretended to act under the placer mining laws of the United States, which said location was recorded May 9, 1910, in Book 59, page 431, of the Conveyance Records of Caddo Parish, Louisiana. That said pretended mineral location embraced Eight and one-half ($8\frac{1}{2}$) acres, included in, and forming a part of the land herein involved, and is in words and figures as follows:

Notice of Mining Location:

W. W. Green,
 to
 The Public.

To whom it may concern:

Notice is hereby given that the undersigned, a citizen of the United States over the age of twenty-one years, having complied with the requirements of Chap. VI, of Title 32 of the Revised Statutes of the United States and

the local mining laws, rules and regulations concerning the locations under mining laws of the United States lands containing petroleum or other mineral oils, having located eight and one half ($8\frac{1}{2}$) acres of land in Caddo Parish, of Louisiana, described as follows:

Beginning at SE Cor. Sec. 4-20-16, thence W. 1320 ft. to corner, thence North 148 ft. to corner; thence East 2640 ft. to corner thence South 148 ft. to corner, thence West 1320 ft. to place of beginning, containing $8\frac{1}{2}$ acres of land, and I hereby declare my intention of complying with the laws relative to the working and holding of the same, a survey having been made and marked at each corner and a notice posted at every corner in a conspicuous place.

Witness my hand this 25th day of April, 1910.

(Signed) W. W. GREEN.

Witnesses:

F. E. CHALK,
TOBE DRESSE.

That said pretended locator himself made no effort to explore said land, or drill for oil and gas thereon, but on December 27, 1911, executed a mineral lease thereof to J. G. Johns, who, on the same date transferred said lease to the Humphrey Oil Company, defendant herein.

That the said Humphrey Oil Company, under its lease from the said Green, drilled a well on said land, and has taken therefrom a large quantity of oil and gas, which it marketed and sold to the Pure Oil Operating Company, defendant herein, which, in turn, sold the same to the Standard Oil Company of Louisiana, defendant herein; that the said Humphrey Oil Company, Pure Oil Operating Company, and Standard Oil Company of Louisiana,

defendants, received the price and value of the oil and gas so produced, marketed and sold, less a royalty paid to the said W. W. Green, John Hargrove, H. L. Heilperin, E. G. Palmer, and Franklin Oil & Fuel Com-
 5 pany, the four last named having acquired an interest in the said lease and mineral location, the amount and proportions of which price so received, and of which royalties so paid, being to the plaintiff unknown. That the said H. L. Heilperin has since died, leaving as his sole heir his daughter, Natalie Heilperin, a minor, whose tutrix, Mrs Fannie B. Heilperin, is one of the defendants herein. The exact quantity of oil and gas so produced, withdrawn from said land, marketed and sold, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so, that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Five Thousand (\$5,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and foreasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

6 3. That the aforesaid mineral location made by W. W. Green, and leases and transfers thereof, as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. May it please the Court that writs of subpoena issue directed to W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, tutrix, and the Pure Oil Operating Company, commanding them at a certain time and
7 under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

9. And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: John L. Hargrove, Franklin Oil & Fuel Company, the Humphrey Oil Company, and the Standard Oil Company of Louisiana, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

10. That plaintiff may have such other and further relief as may seem just to this Honorable Court, and agreeable to equity and good conscience.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. THOMPSON, being first duly sworn, deposes and says:

That is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of

the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

(Seal) LYLE S. MORUS,
Deputy Clerk United States
District Court, Northern Dis-
trict of California.

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ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that John L. Hargrove, the Franklin Oil & Fuel Company, the Humphrey Oil Company and the Standard Oil Company of Louisiana, are not inhabitants of the Western District of Louisiana, and are domiciled outside of said District,

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear, and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of September, 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, respectively, wherever found.

Thus done and signed this 17th day of July, 1917.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Bill of complaint and order for process to issue on absent defts. Filed Jul. 18, 1917.

9 **THE ANSWER OF THE PURE OIL OPERATING COMPANY, DEFENDANT IN THE ABOVE ENTITLED AND NUMBERED CAUSE.**

In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America,

Plaintiff,

vs.

No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, John L. Hargrove, Franklin Oil & Fuel Company, Humphrey Oil Company, Pure Oil Operating Company, Standard Oil Company of Louisiana,

Defendants.

And now comes the said defendant and for answer to the bill of complaint herein filed says:

I.

The ownership of the United States, on or before December 15th, 1908, of the tract of land described in Article I of the bill of complaint is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of

the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendant shows that

10 the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal has ever been vacated; but it is denied that since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Defendant admits that it entered upon and took possession of said property for the purpose of operating the same for oil and gas, but denies that it drilled the well referred to in the bill of complaint. Defendant shows that its possession of said property was legal and in good faith as lessee of locators, under a valid and legal mineral location, and not in violation of any rights of the plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, or to the injury of the plaintiff.

IV.

The averments of Article Four of the bill of complaint are denied and defendant shows that said property forms part of the tract of land included in the mineral location made by Miss Lydia Hanszen and others on the second day of April, 1910, as per notice of location recorded in Conveyance Book 59, page 267, of the records of Caddo Parish, Louisiana, of which said property the said mineral locators were in possession as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order of July 2nd, 1910.

V.

Defendant shows that it knows nothing of the purported location made by W. W. Green and claims nothing thereunder; but defendant shows that its possession of said property was under its lease hereinafter set out, and that it extracted the oil from the said property under and
11 by virtue of its rights as lessee of Miss Lydia Hanszen (now Mrs. Lydia Hanszen McMullen), H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, and Dillard P. Eubanks, who were the legal locators of the tract of land of which the property in controversy forms part; said location having been made by the said lessors on the second day of April, 1910, as fully appears from notice of location recorded in Conveyance Book 59, page 267, of the records of Caddo Parish, Louisiana.

Defendant shows that in violation of the rights of said locators, the said W. W. Green entered upon the tract of land involved herein and made the pretended location thereof, a well being drilled by the pretended lessee of the said Green, which, on the 17th day of December, 1912,

sold to E. G. Palmer and H. L. Heilperin, all of its rights, title and interest in said tract of land and in the said well; the said Heilperin and Palmer surrendering possession thereof to this defendant under an agreement of date January 16th, 1913; which said agreements will be filed in evidence on the trial hereof.

Defendant shows that having secured possession of the said property under said agreement, it continued to operate the said well, and extracted therefrom two thousand nine hundred and seventy-nine (2,979) barrels of oil of the market value of Two Thousand Nine Hundred and Eighty-six & 95/100 (\$2,986.95) Dollars; operating the said well at its own expense.

VI.

Defendant denies that it is now or ever has unlawfully trespassed upon the said property and shows that all of its material has been removed therefrom.

VII.

Defendant denies that it acted in bad faith in the premises, but avers its good faith in all the acts and dealings aforesaid.

VIII.

And now defendant shows that said land was not withdrawn from mineral location until July 2nd, 1910, at which said date and prior thereto, the said mineral locators were in the actual possession of the said land as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact made through such work on the tenth day of

(September, 1910) and that as such, all the rights of the said locators were specially saved and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910.

IX.

Defendant shows that it took possession of the said property in good faith under said lease from Miss Lydia Hansen and others, whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals; and that it secured the possession of the said well and operated the same under such belief of right.

And defendant shows that in the event the Court should hold that the plaintiff is the owner of said land, then that this defendant is entitled to be reimbursed the entire cost of operating the said well before it can be held liable, if any liability there be, for any oil extracted therefrom; the cost and expense of which said operation will be set up later by an amendment hereto.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendant prays that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendant prays that it may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant

the entire cost of drilling and equipping said well and of the operation thereof up to date of final settlement; and that if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Pure Oil Operating Company and against plaintiff.

And defendant prays for all orders and decrees necessary or proper in the premises and for general relief.

BARNETT & BLANCHARD,
THIGPEN & HEROLD,
Solicitors for Defendant.

Indorsed: Answer of Pure Oil Operating Company. Thigpen & Herold; Barnett & Blanchard. Filed Sept. 29, 1917.

B.

14 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, John L. Hargrove, Franklin Oil and Fuel Company, Humphrey Oil Company, Pure Oil Operating Company, Standard Oil Company of Louisiana, Defendants.

The defendants, E. G. Palmer and Mrs. Fannie P. Heilperin, Tutrix of Natalie Heilperin, answer the bill of complaint herein brought against them as follows:

I.

The ownership by the United States, on and before December 15th, 1908, of the tract of land described in Article I of the bill of complaint is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that the last order specially exempted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in
15 diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Defendants deny that in violation of any rights of the plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, they entered upon and took possession of the tract of land in controversy, or that they drilled thereon for oil or gas; but defendants show that on the 17th day of December, 1912, H. L. Heilperin and E. G. Palmer purchased from the Humphrey Oil Company the drilling equipment, pipe and accessories used by the said Company in the Caddo oil fields, according to the list, inventory and description of property accompanying the said instrument, the said sale including the oil well drilled by the vendor on the property here in controversy, as fully appears from said act of sale, certified copy of which will be produced upon the trial hereof. And defendants show that subsequent to their purchase thereof they operated said well for the production of oil for a short time, under the terms of said assignment, subsequently surrendering possession thereof to Pure Oil Operating Co., lessee of L. Hanszen, et als, which thereafter operated said well for a time, paying a portion thereof to defendants according to agreement which will be produced on trial hereof; after paying royalties as therein provided, the total amount of oil sold by defendants from the production of said well being One Thousand Four Hundred and Seventy-Three and 56/100 (\$1,473.56) Dollars.

IV.

The averments of Article Four of the bill of complaint are denied and defendants show that said property forms part of the tract of land included in the mineral location made by Miss Lydia Hanszen and others on the second day of April, 1910, as per notice

of location recorded in Conveyance Book 59, page 267, of the records of Caddo Parish, Louisiana, of which said property the said mineral locators were in possession as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order of July 2nd, 1910.

V.

Defendants say that they do not and did not claim the said property under the mineral location made by Wm. W. Green; but that all of the oil received by them as aforesaid, was received under an agreement from the Pure Oil Operating Company, the lessee of Miss Lydia Hanszen and others, the mineral locators above referred to, under an agreement entered unto between H. L. Heilperin and E. G. Palmer, on the one part, and the Pure Oil Operating Company, of the other part, on January 16th, 1914, which will be produced and filed on the trial hereof.

VI.

Defendants deny that they are now or ever have unlawfully trespassed upon the said property and show that all of their material has been removed therefrom.

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, at

which said date and prior thereto, the said mineral locators were in the actual possession of the said land as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact made through such work on the tenth day of September, 1910) and that as such, all the rights of the said locators were specially saved
17 and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—No. 1154 In Equity. United States District Court, Western District of Louisiana. United States of America vs. W. W. Green, et al. Answer of Mrs. Fannie B. Heilperin, Tutrix, and E. G. Palmer. Thigpen & Herold. Filed Sept. 29, 1917. W. B. Lee, Clerk, U. S. District Court, West. Dist. of Louisiana.

B.

18 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Faune B. Heilperin,
Tutrix of Natalie Heilperin, John L. Hargrove, Frank-
lin Oil and Fuel Company, Humphrey Oil Company,
Pure Oil Operating Company, Standard Oil Company
of Louisiana, Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana
sitting within and for the Shreveport Division:

The answer of the Standard Oil Company of Louisiana,
one of the defendants, to the Bill of Complaint of the
United States of America, complainant.

This defendant saving and reserving unto itself all and
all manner of benefits and advantages of exception, which
can or may be had or taken to the many errors, uncer-
tainties and other imperfections in said bill of complaint
contained, for answer thereunto, or to so much and such
parts thereof as this defendant is advised it is material
or necessary for it to make answer unto, answering, says
as follows:

First. This defendant is not sufficiently informed as
to the matters and things alleged and set out in para-
graphs one and two of said Bill of Complaint to admit
the same as therein stated, and, therefore, formally denies
the same and leaves the complainant to make such proof
thereof as it may be advised.

Second: This defendant denies that it took possession of any part of the property described in paragraph three of plaintiff's Bill of Complaint, or that it drilled any wells thereon, but admits that it bought oil from said property, or a part thereof, under the terms and conditions hereinafter stated.

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Third. In answer to the four paragraph of plaintiff's Bill of Complaint, this defendant says that it is not sufficiently informed as to whether any of its co-defendants were in possession of the property on the day and dates therein alleged, and for that reason it is unable to admit the matters and facts therein stated; but it denies that it was in possession of said property, or any part thereof, or, at the time, claiming rights of any nature or character whatever in connection therewith.

Fourth. In answer to the fifth paragraph of plaintiff's Bill of Complaint this defendant admits that W. W. Green made a mineral location on said property, but is not sufficiently advised in the premises to say whether the location was legal or illegal, and, therefore, formally denies that said mineral location was illegal, and leaves the complainant to make such proof thereof as it may be advised; that it is not advised as to whether the locator made an effort to explore said land, but admits that he made a lease on said property to J. G. Johns, and that the said J. G. Johns transferred said lease to the Humphrey Oil Company, one of the defendants herein, and that the other transfers were made as therein alleged.

Further answering, this defendant admits that it has no title or interest in said property, and being without information as to the other matters of fact alleged in this paragraph of the Bill of Complaint is not in a situ-

ation to admit the same as therein stated, and it, therefore formally denies the same and leaves the complainant to make such proof thereof as it may be advised; but this defendant avers, however, that it is unable to state what quantity of oil was taken from said property, or from what wells said oil was taken, and the number of wells drilled on said property; that it took a part of the oil produced from said property which was run into its pipe lines as hereinafter stated.

Fifth. This defendant avers that on August 3, 1912, the Humphrey Oil and Gas Company, Franklin Oil and Fuel Company, and W. W. Green executed a division order or agreement, with this defendant, whereby and where-
 20 under they declared and certified and guaranteed to it that they were the lawful owners of wells No. 1 and up drilled on the property located by the said W. W. Green as aforesaid, which, as your defendant is advised, embraces a part of the property described in the Bill of Complaint, and that this defendant acquired oil from said parties in good faith, and for valuable considerations, taken from said property, but this defendant is without information as to the number of wells drilled on said property, or the amount of oil taken therefrom, and whether the same was located on the particular property, the ownership of which is now claimed by the complainant; that, thereafter, that is to say on December 17, 1912, the Humphrey Oil and Gas Company transferred its working interest in the well or wells on said property to H. L. Heilperin and E. G. Palmer; and, thereafter, that is to say on January 23, 1913, the said E. G. Palmer transferred his interest thus acquired to the Pure Oil Operating Company, and, on the same date, the said H. L. Heilperin likewise transferred his interest to the Pure

Oil Operating Company, and this defendant annexed hereto a copy of the contract under which said oil was taken and the various assignments, and makes the same a part hereof and marked "Defendant—Exhibit A."

Sixth: This defendant further answers that the oil so taken was acquired from said parties, at the market price thereof, on the respective dates on which the same was run into its pipe lines; that the total number of barrels of oil taken by this defendant from said parties amounts to 12,584.22 barrels, of the value of \$11,042.51; that of the amount due for said oil, \$10,352.41 has been paid to the respective claimants, as hereinafter set out, and this defendant now has in its hands \$690.10 to be paid to the rightful owner, or owners, when the question of title to said property, from which said oil was taken is finally determined; that of the amount so paid the Pure Oil Operating Company has received \$2,986.95; the Humprey Oil and Gas Company \$5,199.58; H. L. Heilperin \$737.90; Franklin Oil & Fuel Company \$690.03; and E. G. Palmer \$737.95. All of the oil so taken,
 21 as aforesaid, and the amounts paid and retained will be shown by itemized statement which will be produced on the hearing hereof.

Seventh. This defendant denies that it bought said oil in bad faith. On the contrary, it avers that it acquired the same in good faith, and run the same into its pipe lines from wells claimed to be owned by its co-defendants.

Eighth. Defendant further avers that it does not know and is not informed which one of the well or wells drilled on said property is or are on the land in controversy, but that said oil was bought by it from the supposed owners, as alleged in paragraph five of this answer, and that the

same was received by it and taken into its pipe lines, but not from any particular, separate, distinct or designated well, or wells, but that all of said oil was run and taken from wells drilled on said premises without reference to any particular or designated well or wells, and that it is unable to state with any degree of certainty the amount of oil taken from any or from each of the wells drilled on said property, and that prior to the taking of any of said oil it was advised by the alleged owners that the title thereto was vested in them, and that the oil so bought was acquired in good faith.

Ninth. Further answering, this defendant avers, in the alternative, that it acquired said oil from its co-defendants, who warranted the title to the property from which the same was taken, and that in the event their title to said property should be declared void, and this defendant held for the purchase price thereof, its co-defendants would constitute warrantors of the title thereto; and they being parties to said suit, should this defendant be declared liable to the said complainant, for the value thereof, then, and in that event, it should have a like judgment against its co-defendants and for such judgment as may be rendered against it in the premises; that such relief, in behalf of this defendant, would avoid a multiplicity of suits, and that in law and equity, should
 22 it be cast, it is entitled to a like judgment against each of them for such amounts as might be shown to have been paid to them.

Tenth. Further answering, this defendant avers that when some question was raised as to the ownership of said property it required of said co-defendants, and claimants of the oil so taken, bonds of indemnity to secure it

against any loss which might be occasioned by any successful claim urged against their said titles, and, to that end, some of said parties executed bonds to indemnify it against loss of any nature or character whatever occasioned by adverse claims of ownership to said property, or the oil taken therefrom; that in conformity with said requirements the said Humphrey Oil and Gas Company executed a bond, of date, December 21, 1912, with the United States Fidelity & Guaranty Company of Maryland, as surety, for \$6,000.00, a copy of which is annexed hereto and marked "Defendant—Exhibit B"; that the said Franklin Oil & Fuel Company executed a bond, of date August 16, 1913, with the National Surety Company, as surety, for \$1,000.00, a copy of which is annexed hereto and marked "Defendant—Exhibit C"; the said E. G. Palmer executed a bond, of date February 25, 1913, with the United States Fidelity & Guaranty Company of Maryland, as surety, for \$1,000.00, a copy of which is annexed hereto and marked "Defendant—Exhibit D"; the said H. L. Heilperin executed a bond, of date February 25, 1913, with the United States Fidelity & Guaranty Company of Maryland, as surety, for \$1,000.00; a copy of which is attached hereto and marked Ex. E. and the Pure Oil Operating Company executed a bond, of date December 18, 1913, with the American Surety Company of New York, as surety, for \$125,000.00 to indemnify defendant against loss on this and other properties, a copy of which is annexed hereto and marked "Defendant—Exhibit F"; that upon the execution of said bonds the said sum of \$11,352.41 was paid to its co-defendants on the faith thereof, said amount so paid being shown by itemized statement to be produced on the hearing hereof; and this defendant reserves the right, in the event it should be cast in this proceeding, to proceed against said sureties and princi-

- 23 pals to recover any loss it may sustain by reason of any judgment which may be obtained by the complainant against it.

Wherefore, this defendant having made full and complete answer to all the matters and things required of it in plaintiff's Bill of Complaint, prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and on filing hearing should this defendant be cast, that a decree be entered in its favor against its co-defendants for such judgment as may be rendered against it on the demands of the complainant; and, finally, this defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all other necessary orders and decrees as it may be entitled to in equity and good conscience, and from the nature and character of this case.

J. C. PUGH & SON,
Solicitors for the Standard Oil
Co. of La.

24 DEFENDANT—EXHIBIT "A."

Copy.

August 3rd, 1912.

To the Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of Wells Nos. 1 and up on the Green Farm, Sec. 4-20-16, Township, Caddo Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit to	Division of Interest	Postoffice Address
Humphrey Oil & Gas Co.	7/8 W. I.	1214 Corn Exchange Bank Bldg., Chicago Ill.
Franklin Oil & Fuel Co.	1/16 R. I.	Colorado Bldg, Wash- ington, D. C.
W. W. Green	1/16 R. I.	Oil City, La.
Tank Nos.		

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

HUMPHREY OIL & GAS CO.,

By JOHN CUDAHY, Prest.

W. W. GREEN.

FRANKLIN OIL & FUEL CO.,

By J. L. HARGRAVE, Prest.

Witness:

EVAN HUMPHREY,

DAN CARMODY,

J. E. BAKER,

C. H. THURMONDE,

C. W. HOLLAND, as to

N. S. FAUCETT F. O. & F. Co.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917. W. B. Lee, Clerk, U. S. District Court, West. Dist. of Louisiana.

25

Copy.

Shreveport, La. 12/17/12.

To the Standard Oil Co. of La.:

The undersigned has this day sold all W. I. interest in Well No. 1 and up, on Green, et al. Farm, Sec. 4, Township 20, R. 16, Caddo Parish, State of Louisiana, as below:

Interest	Name	Postoffice Address.
1/2 W. I.	H. L. Heilperin	Shreveport, La.
1/2 W. I.	E. G. Palmer	Shreveport, La.

Covering all of the 7/8 W. I.
or all of our interest.

You will therefore give credit for oil received from said interest as above.

Tank Nos.

HUMPHREY OIL & GAS CO.,
By EVAN HUMPHREY,
Sec. Agent and Attorney.

Witness:

J. F. SLATTERY,
J. A. THIGPEN.

The undersigned hereby certify and agree that the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La., is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La., as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their as-

signs, in proportion to their respective interests as shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

E. G. PALMER,
H. L. HEILPERIN.

Witness:

J. F. SLATTERY,
J. A. THIGPEN.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917, W. B. Lee, Clerk, U. S. District Court, West. Dist. of Louisiana.

Copy.

Shreveport, La., 1/23/13.

To the Standard Oil Co. of La.:

The undersigned has this day sold 11/32 W. I. interest in Well No. 1 on Green Farm, 4-20-16 Township, Caddo Parish, State of Louisiana, as below.

Interest	Name	Postoffice Address
11/32 W. I.	The Pure Oil Operating Co.,	Pittsburg, Pa.

You will therefore give credit for oil received from said interest as above.

E. G. PALMER.

Tank Nos. 769.

The undersigned hereby certify and agree that they are the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La., is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La., as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown

above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,
By E. H. JENNINGS, Treas.

Witness:

W. J. HIGGINS.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917, W. B. Lee, Clerk, U. S. District Court, West. Dist. of Louisiana.

Copy.

Shreveport, La., 1/23/13.

To the Standard Oil Co. of La.:

The undersigned has this day sold 11/32 W. I. interest in Well No. 1 and up on Green Farm, 4-20-16, Township, Caddo Parish, State of Louisiana, as below.

Interest	Name	Postoffice Address
11/32	The Pure Oil Operating Co.,	Pittsburg, Pa.

You will therefore give credit for oil received from said interest as above.

Tank Nos. 769.

H. L. HEILPERIN.

The undersigned hereby certify and agree that they are the legal owner of the well interest above transferred, and thereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La., is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La., as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests as shown

above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,
By E. H. JENNINGS, Treas.

Witness:

W. J. HIGGINS.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917, W. B. Lee, Clerk, U. S. District Court, West. Dist. of Louisiana.

Copy.

August 3rd, 1912.

To the Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of Wells No. 1 and up on the Green Farm, Sec. 4-20-16, Township, Caddo Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit to	Division of Interest	Postoffice Address
Humphrey Oil & Gas Co.	7/8 W. I.	1214 Corn Exchange Bank Bldg., Chicago Ill.
Franklin Oil & Fuel Co.	1/16 R. I.	Colorado Bldg, Washington, D. C.
W. W. Green	1/16 R. I.	Oil City, La.

Tank Nos.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown

above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

HUMPHREY OIL & GAS CO.,

By JOHN CUDAHY, Prest.

W. W. GREEN.

FRANKLIN OIL & FUEL CO.,

By J. L. HARGRAVE, Prest.

Witness:

EVAN HUMPHREY,

DAN CARMODY,

J. E. BAKER,

C. H. THURMONDE,

C. W. HOLLAND, as to

N. S. FAUCETT F. O. & F. Co.

Approved:

J. C. PUGH.

39

29

Shreveport, La. 12/17/12.

To the Standard Oil Co. of La.:

The undersigned has this day sold all W. I. interest in Wells No. 1 and up, on Green, et al., Farm, Sec. 4, Township 20 R. 16 Caddo Parish, State of Louisiana as below.

Interest.	Name	Postoffice Address.
1/2 W. I.	H. L. Heilperin	Shreveport, La.
1/2 W. I.	E. G. Palmer	Shreveport La.

Covering all of the 7/8 W. I. or all of our interest.

You will therefore give credit for oil received from said interest as above.

HUMPHREY OIL & GAS CO.,
By EVAN HUMPHREY,
Sec. Agent and Attorney.

Witness:

J. F. SLATTERY,
J. A. THIGPEN.

Tank Nos.

The undersigned hereby certify and agree that the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La. is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La. as soon as the same is received into its custody.

Second. The oil received in pursuance to this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

E. G. PALMER,
H. L. HEILPERIN.

Witness:

J. F. SLATTERY,
J. A. THIGPEN.

Approved:

J. C. PUGH.

30

Shreveport, La., 1/23/13

To the Standard Oil Co. of La.:

The undersigned has this day sold 11/32 W. T. interest in Wells No. 1 and up, on Green Farm, 4-20-16 Township Caddo Parish, State of Louisiana as below.

Interest.	Name	Postoffice Address.
11/32	The Pure Oil Operating Co.	Pittsburg, Pa.

You will therefore give credit for oil received from said interest as above.

H. L. HEILPERIN.

Tank Nos. 769.

The undersigned hereby certify and agree that they are the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La. is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La. as soon as the same is received into its custody.

Second. The oil received in pursuance to this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,
By E. H. JENNINGS, Treas.

Witness:

W. J. HIGGINS.

Approved:

J. S. PUGH.

31

Shreveport, La., 1/23/13.

To the Standard Oil Co. of La.:

The undersigned has this day sold 11/32 W. I. interest in Wells No. 1 and up, on Green Farm, 4-20-16 Township Caddo Parish, State of Louisiana, as below.

Interest.	Name	Postoffice Address.
11/32 W. I.	The Pure Oil Operating Co.	Pittsburg, Pa.

You will therefore give credit for oil received from said interest as above.

E. G. PALMER.

Tank Nos. 769.

The undersigned hereby certify and agree that they are the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La. is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La. as soon as the same is received into its custody.

Second. The oil received in pursuance to this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the

said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,
By E. H. JENNINGS, Treas.

Witness:

W. J. HIGGINS.

Approved:

J. C. PUGH.

32

DEFENDANT EX. "B."

State of Louisiana,

Parish of Caddo.

Know all men by these presents:

That we, Humphrey Oil & Gas Company, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the full sum of Six thousand (\$6,000.00) dollars, for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives firmly and in solido by these presents.

Dated at Shreveport, La., this 21st day of December, 1912.

The condition of the above obligation is such that, whereas, the above bounden Humphrey Oil & Gas Company has sold to the Standard Oil Company, of Louisiana, oil from a well located on lands in the southeast corner (SE) corner of Section 4, Township 20, Range 16, and fully described as the mineral location of W. W. Green, as recorded in Book 59 of Conveyances, page 431, and whereas the said Standard Oil Co. of Louisiana has taken oil from said well to the extent of Five Thousand One Hundred

and Ninety-nine Dollars and fifty-eight cents (\$5199.58), and the Humphrey Oil & Gas Company desires to withdraw said amount now in the hands of the said Standard Oil Co. of Louisiana; and, whereas, some question has been raised as to the validity of the title of the Humphrey Oil & Gas Company to the oil taken from said well, and, under the obligation entered into by and between said parties, under which said oil was purchased, the said Standard Oil Co., of Louisiana, having the right to demand security in the event the title of the Humphrey Oil & Gas Company should be brought into question.

Now, therefore, if the said Humphrey Oil & Gas Company shall well and truly pay and satisfy any claim made by adverse parties to the ownership of the oil taken from the well on said land, or any damages which the Standard Oil Company of Louisiana may sustain by reason of any adverse claim to the oil taken from said well, and hold the said Standard Oil Co. of Louisiana harmless from damage of any nature or character whatever by reason of its purchase of oil from the said Humphrey Oil & Gas Company, then this obligation to be null and void, otherwise to remain in full force and effect.

UNITED STATES FIDELITY &
GUARANTY CO.,

By (Signed) WM. M. FORD,

(Seal)

Attorney in Fact.

HUMPHREY OIL & GAS COMPANY,

By (Signed) JOHN CUDAHY,

President.

Attest:

Signed

EVANS HUMPHREY.

Approved:

Seal

J. C. PUGH.

Copy

33 Know all men by these presents, that we, Franklin Oil and Fuel Company, as principal, and National Surety Company, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the penal sum of One Thousand (\$1,000.00) Dollars, which said sum we bind ourselves, our successors and assigns, jointly and severally by these presents to pay.

Now the condition of the above obligation is such that:

Whereas, the above bounden Franklin Oil and Fuel Company claim a one-sixteenth (1/16) royalty from oil taken from wells on a tract of land in Section 4, Township 20, Range 16, situated in Caddo Parish, Louisiana, and on which wells have been drilled producing oil; and,

Whereas, the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounden Franklin Oil and Fuel Company claims to be the owner of an undivided one-sixteenth (1/16) interest of the oil taken from said well, as royalty, as per division order heretofore signed; and,

Whereas, there are adverse claims to the ownership of said property; and

Whereas, by the contract under which the Standard Oil Company of Louisiana is taking said oil from said well, as aforesaid, the said Franklin Oil and Fuel Company has the right to withdraw its part of the proceeds from said oil run from said well by executing bond with approved security:

Now, therefore, if the said bounden Franklin Oil and Fuel Company shall hold the said Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants whatever, to said property of the oil produced therefrom, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Franklin Oil and Fuel Company, (not to exceed, however, the penal sum of One Thousand (\$1,000) Dollars, named in this Bond), together with all interest, damages and costs, then, in such event, this obligation shall be null and void; otherwise to remain in full force and effect.

Sealed with our seals, and dated this 16th day of August, A. D. 1913.

FRANKLIN OIL AND FUEL
COMPANY,

By (Signed) JOHN S. HARGROVE, President.

NATIONAL SURETY COMPANY,

By (Signed) WM. H. ROSAVILLE,

Attorney in fact. Seal.

Witness:

N. S. FAULK, as to

Witness: both

F. M. STRAWN.

Approved:

(Seal)

J. C. PUGH.

Copy.

Defendant Ex. C.

34 State of Louisiana,
 Parish of Caddo.

Know all men by these presents: that we, E. G. Palmer, as principal, and the United States Fidelity & Guaranty Company, of Maryland, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of One Thousand (\$1,000.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated, at Shreveport, La., this 25th day of February, A. D. 1913.

Now the condition of the above obligation is such that:

Whereas the above bounden E. G. Palmer claims to be the owner of an undivided five-thirty-second (5/32) interest in and to what is known as the Green Well in Section 4, Township 20, Range 16, Caddo Parish, Louisiana; and,

Whereas the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounden E. G. Palmer claims to be entitled to five-thirty-seconds (5/32) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas there are adverse claims to the ownership of said property; and,

Whereas by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said

well, as aforesaid, the said E. G. Palmer has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security.

Now, therefore, if the said above bounden E. G. Palmer shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said E. G. Palmer, under his claim as owner of an undivided five-thirty-second ($5/32$) interest in said oil, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) E. G. PALMER,
UNITED STATES FIDELITY &
GUARANTY CO.,

By (Signed) WM. M. FORD,
Its Attorney in Fact. Seal.

Approved:

Signed J. C. PUGH.

Copy.

Defendant Ex. D.

35 State of Louisiana,
Parish of Caddo.

Know all men by these presents: that we, H. L. Heilparin, as principal, and The United States Fidelity & Guaranty Company of Maryland, as surety, are held and firmly bound unto the Standard Oil Company of Louisi-

ana, in the sum of One Thousand (\$1,000) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 25th day of February, A. D. 1913.

Now the condition of the above obligation is such that:

Whereas, the above bounden H. L. Heilperin claims to be the owner of an undivided five-thirty-seconds ($5/32$) interest in and to what is known as the Green well in section 4, Township 20, Range 16, Caddo Parish, Louisiana; and,

Whereas the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounden H. L. Heilperin claims to be entitled to five-thirty-seconds ($5/32$) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and

Whereas there are adverse claims to the ownership of said property; and

Whereas by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said well, as aforesaid, the said H. L. Heilperin has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security;

Now, therefore, if the said above bounden H. L. Heilperin shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said H.

L. Heilperin, under his said claim as owner of an undivided five-thirty-seconds (5/32) interest in said oil, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) H. L. HEILPERIN,
UNITED STATES FIDELITY &
GUARANTY CO.,

By (Signed) WM. M. FORD,
Its Attorney-in-fact. Seal.

Approved:

(Signed) J. C. PUGH.

Defendant Ex. E.

Copy.

36

(DEFENDANT'S EX. F.)

(Copy).

State of Louisiana,
Parish of Caddo, ss:

Know all men by these presents, that we, The Pure Oil Operating Company, as Principal, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana in the full sum of One Hundred Twenty-Five Thousand Dollars, for the payment of which we bind ourselves, our successors and legal representatives, firmly and in solido by these presents.

Dated at Shreveport, Louisiana, this 18th day of December, in the year of Our Lord one thousand nine hundred and thirteen.

The condition of the above obligation is such that:

Whereas, the said The Pure Oil Operating Company as the lessee of L. Hanszen, et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, North, Range Sixteen West, being the same tract of land located under Placer Mining Laws by the lessors on April 2, 1910, as appears from the said location recorded in the Conveyance Records of Caddo Parish, Louisiana; and

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ of error sued out by the Producers Oil Company to the Supreme Court of Louisiana which latter Court has sustained the right of the lessors of the said The Pure Oil Operating Company; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hanszen, and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the

Parish of Caddo, State of Louisiana, in Section
 37 Ten, Township Twenty, North, Range Sixteen
 West, and being more particularly described as
 follows: Beginning at a point twenty-four chains east of
 the northwest corner of said section ten; thence south
 twenty degrees west ten chains; thence south forty-three
 degrees east twenty chains to a stake at traverse corner,
 which is the beginning of the tract so leased and herein
 located; thence south sixty degrees west eight and five-

tenths chains; thence south five chains; thence south forty-five degrees east ten chains; thence south forty degrees west one and sixty-two hundredths chains; thence west thirty-four and fifty-six one-hundredths chains to stake on traverse line; thence north thirty degrees east thirteen and eight one-hundredths chains along traverse line; thence north seventy-eight degrees east along traverse line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres, more or less, a stake being set at each corner of said tract, and being the same land surveyed out and the lines and corners marked by the Lessors on April 24, 1910, under their file and claim under the Placer Mining Laws of the United States as appears from the said location recorded in the Conveyance Records of Caddo Parish, Louisiana; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, Range Sixteen, being a long narrow strip of land running along the south line of said sections and known as the "Green Mineral File"; and,

Whereas, the said Standard Oil Company of Louisiana, the obligee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said three pieces of land above described, and is now running further and additional oil from the said
 38 three pieces of land under purchase from the
 said The Pure Oil Operating Company:

Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United States of America, and to all the every other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the credit of and purchase from other and third persons claiming to be interested therein, but only to cover and embrace the oil run therefrom to the credit of and purchase from the said The Pure Oil Operating Company.

**THE PURE OIL OPERATING
COMPANY,**

By (Signed)

T. W. PHILLIPYS,

Its President.

Attest:

(Signed)

W. J. HIGGINS,

(Seal)

Its Secretary.

**AMERICAN SURETY COMPANY
OF NEW YORK,**

By (Signed)

LEON R. SMITH,

(Seal)

Resident Vice-President.

Signed, sealed and delivered by the Pure Oil Operating Company in our presence.

(Signed)

W. B. CARLON,

(Signed)

C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence.

(Signed) J. E. JOHNSTON, JR.,

(Signed) GEO. G. DIMICK.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917.

39 Indorsed: Answer of Standard Oil Co. of La., to Bill of Complaint. Filed Oct. 1, 1917.

40 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, John L. Hargrove, Franklin Oil & Fuel Company, Humphrey Oil Company, Pure Oil Operating Company, Standard Oil Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counter claim asserted by the Pure Oil Operating Company in its answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 9, and the prayer of said answer.

IV.

Plaintiff shows that the said defendant is not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

VI.

Plaintiff shows that the defendant has not asserted any particular amount as an offset or counterclaim
41 and plaintiff reserves the right to make further reply in event defendant should hereafter claim any specific sum in the premises.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendant be denied and disal-

lowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendant's (Pure Oil Operating Company) Set off and Counterclaim. Filed Oct. 5, 1917.

42 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin,
Tutrix, John L. Hargrove, Franklin Oil and Fuel
Company, Humphrey Oil Company, Pure Oil Oper-
ating Company, Standard Oil Company of Louisiana,
Defendants.

And now comes the defendant, Pure Oil Operating Company, in the above entitled and numbered cause, and moves the Court for leave to amend its answer, as will appear in the amended answer herewith filed. That said amendments are material and necessary to a proper defense of the case; that the matter as amended and the amendments offered were not incorporated in the original answer because of the fact that counsel for defendant had not at the time within which the answer was due accurate knowledge of the facts stated in the amendments.

Wherefore, it prays that said amendments be allowed and considered a part of the answer upon the hearing of this cause.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Attorneys for Defendant.

43 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin,
Tutrix, John L. Hargrove, Franklin Oil & Fuel Com-
pany, Humphrey Oil Company, Pure Oil Operating
Company, Standard Oil Company of Louisiana, De-
fendants.

This cause coming on to be heard on the motion of defendant, Pure Oil Operating Company to amend its answer, and both parties having appeared, and the Court being fully advised of the amendments sought to be made to the answer of defendant heretofore filed in this cause, it is hereby ordered, adjudged and decreed that the motion be granted and that the amendments as set forth in the motion be allowed; and the Clerk of the Court is hereby ordered, to file the same as of the date of this order, as amendments to the original answer.

Thus done, and signed at Chambers, at Shreveport, Louisiana, on this the 31 day of October, 1917.

GEO. WHITFIELD JACK,
United States District Judge.

- 44 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix, John L. Hargrove, Franklin Oil & Fuel Company, Humphrey Oil Company, Pure Oil Operating Company, Standard Oil Company of Louisiana, Defendants.

Amended answer of the Pure Oil Operating Company, defendant in the above entitled and numbered cause.

Now comes the said defendant, and, with leave of this Court first had and obtained, files this amendment to the answer heretofore filed, as follows:

Defendant amends Article IX of its original answer so as to read as follows:

IX.

Defendant shows that it took possession of the said property in good faith under said lease from Miss Lydia Hanszen and others, whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals; and that it secured the possession of the said well and operated the same under such belief of right.

And defendant shows that in the event the Court should hold that the plaintiff is the owner of said land, then this

defendant is entitled to be reimbursed the entire cost of operating the said well before it can be held liable, if any liability there be, for the value of any oil extracted therefrom; and that the actual cost to this defendant of operating the said well, up to the time of its abandonment in June, 1915, amounted to the sum of Twenty-six Hundred and Ninety-seven and 80/100 (\$2,697.80) Dollars.

Wherefore, reaffirming the allegations and prayer of its original answer, filed herein, defendant prays for judgment as originally prayed for.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Attorneys for Defendant.

45 Indorsed:—Amended Answer. Filed Oct. 31,
1917.

R.

46 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs.

No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin,
Tutrix of Natalie Heilperin, John L. Hargrove, Frank-
lin Oil & Fuel Company, Humphrey Oil Company,
Pure Oil Operating Company, Standard Oil Company,
Defendants.

I.

Now into this Honorable Court comes the United States
of America, plaintiff in the above numbered and entitled

cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to set off and counterclaim asserted by defendant, the Pure Oil Operating Company, in its amended answer herein, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said amended answer relating to said set off and counterclaim, and particularly, paragraph 9, and the prayer of said amended answer.

IV.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

VIII.

Wherefore, plaintiff prays that the set off and counter-claim asserted by the defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the Attor-
ney General.

Indorsed:—Plaintiff's Reply to Set Off and Counter Claim of Defendant (Pure Oil Operating Company), in its Amended Answer. Filed Nov. 5, 1917.

48 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1154, In Equity.
W. W. Green, et al., Defendant.

In the above entitled matter now comes the Standard Oil Company of Louisiana, one of the defendants herein, through its undersigned counsel, and suggesting to the Court that the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are interrogatories Nos. 23 and 24, as follows:

Interrogatory No. 23: State the total value, either exactly, if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

Interrogatory No. 24: State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

Now this defendant avers that it will fully appear by the petition and answer herein that the only issuable facts between the plaintiff and this defendant is the value of the oil bought by it from the property in dispute, the ownership of which is claimed by the plaintiff; that from the issues so made up, the answers to these two interrogatories could in no way tend to support the demands of the plaintiff against this defendant, and are, therefore, irrelevant, and immaterial to any issues involved in said cause as between the plaintiff and this defendant and an answer thereto would not illicit any fact or facts material to the support of plaintiff's action, and that said interrogatories should be stricken out.

49 Wherefore, this defendant prays that after due consideration said two interrogatories be stricken out and that this defendant be dispensed with the necessity of answering the same.

It prays for all rules, orders and decrees needful, and for cost and general relief.

J. C. PUGH & SON,
Attys. for Standard Oil Co.
of La.

Indorsed:—Motion of Standard Oil Co. of La., to Strike Out Interrogatories Nos 23 and 24. Filed Feb. 6, 1918.

50 (INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO PURE OIL OPERATING
CO., JOHN L. HARGROVE, MRS. FAN-
NIE B. HEILPERIN AND E. G. PAL-
MER).

Interrogatories Propounded by Plaintiff.

(1).

State who drilled the well known as Green No. 1 on the land in controversy in this case, and also state under what claim of title or authority said well was drilled.

(2).

State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3).

Did said well produce oil, and was said oil or the proceeds of the sale thereof, converted to the use and benefit of the defendants in this cause?

(4).

During what period was said well operated in the production of oil, and when if at all, did it cease to produce oil?

(5).

Is it not a fact that the said well was drilled by the Humphrey Oil Company, or Humphrey Oil & Gas Company, on the property in controversy, and was not said well operated for a time in the production of oil by said Company, and later by E. G. Palmer and H. L. Heilperin,

as assignees of said Company, and did not the said Palmer and Heilperin transfer their interests therein to the Pure Oil Operating Company? If your answer is in the affirmative, state when said well was operated by the Companies and persons above named.

(6).

In paragraph five of the answer of E. G. Palmer and Mrs. Fannie B. Heilperin herein, reference is made to an agreement entered into between H. L. Heilperin and E. G. Palmer on the one part and the Pure Oil Operating Company of the other part, on January 16, 1914. Please attach to your answer to this interrogatory a copy of said agreement.

(7).

In paragraph five of the answer of the Pure Oil Operating Oil Company herein, it is stated that a well was drilled on the tract of land involved in this suit by one who is styled in your answer as a pretended lessee of W. W.

51 Green, which lessee on the 17th of December 1912, sold to E. G. Palmer and H. L. Heilperin, all of its right, title and interest in said tract of land and in said well, the said Heilperin and Palmer surrendering possession thereof to you under an agreement of date January 16, 1913. Please attach to your answer to these interrogatories, copies of the agreements referred in your answer to the bill of complaint.

(8).

State the total production of oil from the said well (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

(9).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(10).

Was a separate and complete record kept by the Pure Oil Operating Company of the oil produced by said well? If so, state how, and in what manner said record was kept.

(11).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(12).

State the total market value of the oil produced by the Humphrey Oil Company, E. G. Palmer, H. L. Heilperin and the Pure Oil Operating Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate and furthermore, state upon what the value as given is based.

(13).

State to what person or company the production of the well in suit was sold during the time the same was operated. Is it not a fact that the entire production of the well in suit was sold by the Humphrey Oil Company, E. G. Palmer, H. L. Heilperin and the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

(14).

State the quantity of the oil extracted from the land in controversy which was sold by the producers thereof to the Standard Oil Company of Louisiana.

(15).

What was the total price received by the Humphrey Oil Company for all the oil produced by the well in controversy. Please state separately the price received by E. G. Palmer, and H. L. Heilperin, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana.

(16).

Was not the said oil sold by the Humphrey Oil Company, E. G. Palmer, H. L. Heilperin and the Pure Oil Operating Company to the Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

(17).

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

(18).

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipe line run, or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and
53 did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by the gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(19).

In the answer of the Standard Oil Company of Louisiana to the bill of complaint herein, it is stated that 12,584.22 barrels of oil of the value of \$11,042.57 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the well in suit, and other wells not in suit, then state the names

and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the well involved in this suit.

(20).

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$10,352.41 has been paid to the claimants of said oil, and that \$690.10 is held for payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

(21).

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also
54 state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(22).

What are the principal products manufactured from petroleum, or crude oil?

(23).

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products

manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

(24).

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(25).

How much money was paid by you as royalty to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Note: All of the above interrogatories, except interrogatories Nos. 6, 21, 22, and 23 are to be answered by the Pure Oil Operating Company.

Interrogatories 13 to 25 inclusive are to be answered by the Standard Oil Company of Louisiana, and no other interrogatories are to be answered by said Company.

All of the above interrogatories are to be answered by John L. Hargrove, except interrogatories 6, 7, 21, 22, 23 and 25.

55 All of the above interrogatories except interrogatories 7, 21, 22 and 23 are to be answered by Mrs. Fannie B. Heilperin and E. G. Palmer.

Indorsed: Petition and order for interrogatories and interrogatories to be answered by the Pure Oil Operating Company, John L. Hargrove, Mrs. Fannie B. Heilperin, & E. G. Palmer. Filed Feb. 14, 1918.

B.

56 In the District Court of the United States for the Western District of Louisiana.

United States of America,

Complainant,

vs.

No. 1154 In Equity.

W. W. Green, et al,

Defendant.

In the above entitled matter Amos K. Gordon, Secretary & Treasurer of the Standard Oil Company of Louisiana, appears and answers the interrogatories propounded to the Standard Oil Company of Louisiana, (except Nos. 23 and 24—a motion having been made to strike them out) as follows:

Interrogatory No. 13.

State to what person or Company the production of the well in suit was sold during the time the same was operated. Is it not a fact that the entire production of the well in suit was sold by the Humphrey Oil Company, E. G. Palmer, H. L. Heilperin and the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is unable to state to whom all of the oil produced by wells on this property was sold. This Company bought oil from this property from May 1912, to August 1914, and during this time the production was sold to this defendant by the parties referred to. A part of the production may have been sold to other parties, but we have nothing in our files that would give information as to sales to other purchasers.

Interrogatory No. 14:

State the quantity of the oil extracted from the land in controversy which was sold by the producers thereof to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it bought from the property in controversy 12,584.22 barrels of oil of the value of \$11,042.51 during the time the oil was run to this Company, as fully set out in answer.

Interrogatory No. 15:

In answer to this interrogatory, the defendant, the Oil Company for all the oil produced by the well in controversy. Please state separately the price received by E. G. Palmer and H. L. Heilperin, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement marked Exhibit "A" will
 57 show the total price received by the respective parties inquired about from this defendant for the oil purchased.

Interrogatory No. 16:

Was not the said oil sold by the Humphrey Oil Company, E. G. Palmer, H. L. Heilperin and the Pure Oil Operating Company to the Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the oil was sold by the operator and royalty owners to the defendant on the land where it was produced. It was run into tanks owned by the operators, which were gauged by this defendant's agents and employees and then run into its pipe line and removed from the land in controversy.

Interrogatory No. 17:

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement annexed and marked Exhibit "A" will show the quantity and value of the oil bought from this property by this defendant and taken away.

Interrogatory No. 18:

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana went upon the land in controversy at the time of any pipe

line run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is a fact that the agents and employees of this defendant went on the property and gauged the tanks from which oil was purchased and the quantity thus ascertained.

Interrogatory No. 19:

In the answer of the Standard Oil Company of Louisiana to the bill of complaint herein, it is stated that 12,584.22 barrels of oil of the value of \$11,042.51 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the well in suit, and other wells not in suit, then state the names and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the wells involved in this suit.

58 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the oil referred to was taken from the land in con-

troversy, as stated in the answer. This Company is not advised as to the number of wells drilled on said property, and it is not able to state the location of the other wells if any were drilled. When it buys oil it is taken from the tanks located on the property and ordinarily it is not in a situation to know from what wells the oil is so taken and stored in the tanks.

Interrogatory No. 20:

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$10,352.41 has been paid to the claimants of said oil, and that \$690.10 is held for the payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement will show all the oil taken by it from the property in controversy, and the names of the parties from whom the oil was so bought, and the amounts paid them. The annexed division orders and transfer orders, marked Exhibit "B", will show the names and addresses of the respective parties inquired about in said interrogatory. The \$690.10 referred to in the answer is held for account of W. W. Green, who claimed to have held 1/16 royalty interest in said property.

Interrogatory No. 21:

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time of said

oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is engaged, and was at the time the oil was taken, in the manufacture and sale, as well as the production, of oil, but it is unable to state just what disposition was made of the oil purchased by it from said property; but the oil taken from the property in controversy having been of a light character was probably manufactured, although all the oil taken from wells in this locality was run into the pipe line and it could not be stated with certainty that this particular oil was manufactured.

Interrogatory No. 22:

What are the principal products manufactured from petroleum, or crude oil?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the principal products manufactured from petroleum, or crude oil, are what is commercially known as gasoline, kerosene, engine distillate, lubricating oils of various grades, gas oil, fuel oil, paraffine and coke.

Interrogatory No. 25:

How much money was paid by you as royalty to any
of the other defendants herein, out of the proceeds
59 of sale of oil taken from the land in controversy,
and state the amount of such royalties, which
you are now holding, if any, pending the result of this
suit, as well as the names of the persons to whom said

royalties were paid, or for whose account they are now being held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement referred to will show all of the money paid to the royalty owners, and furnish such other information as is inquired about in this interrogatory.

A. K. GORDON,
Secretary and Treasurer.

Sworn to and subscribed before me on this the 8th day of February, 1918.

(Seal) T. B. BEALE,
Notary Public, in and for the
Parish of East Baton Rouge,
Louisiana.

Indorsed: Answer to interrogatories of the defendant, the Standard Oil Company of Louisiana. Filed Feb. 11, 1918.

B.

60 In the District Court of the United States for the
Western District of Louisiana.

United States of America,

Complainant,

vs.

No. 1154 In Equity.

W. W. Green, et al,

Defendant.

Now into this Honorable Court comes Robert A. Hunter, Special Assistant to the Attorney General, and with respect represents:

That the bill of complaint and order indorsed thereon was served herein, on defendants, John L. Hargrove, July 23, 1917, Franklin Oil & Fuel Company, July 24, 1917, and that an alias subpoena in chancery was served on W. W. Green, October 10, 1917. Plaintiff shows that the said defendants have filed no answers or other appearance herein.

Plaintiff, therefore, moves that the bill of complaint in this cause be taken pro confesso against the said defendants.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed: Motion for taking the bill pro confesso against John L. Hargrove, Franklin Oil & Fuel Company, and W. W. Green. Filed Feb. 25, 1918.
B.

60½ United States District Court, Western District
of Louisiana.

Monday:

Shreveport, La., Feb. 25, 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Honorable Geo. Whitfield Jack
and Rufus E. Foster, United States Judges.

United States,
vs. No. 1154 In Equity.
W. W. Green, et als.

On motion of Robert A. Hunter, Esq., Special Assistant to the Attorney General, and on suggesting to the Court that certified copies of the bill of Complaint with the order annexed thereto were served upon defendants John L. Hargrove and the Franklin Oil & Fuel Company on July 23, and July 24, 1917, respectively, and that an alias subpoena in chancery was served on W. W. Green, October 10, 1917, as will appear by the returns of service on file in the office of the Clerk and it further appearing that no answer or other appearance has been filed herein by said defendants, or any of them, it is therefore, ordered adjudged and decreed that the bill of complaint herein be taken pro confesso against the said defendants, John L. Hargrove, Franklin Oil & Fuel Co. and W. W. Green.

Upon the motion of Mr. Robert A. Hunter, Special Assistant to the Attorney General, it is ordered that this cause be set for Wednesday, February 27, 1918, for hearing on the motion of Standard Oil Co. to strike out certain interrogatories.

61 In the District Court of the United States for the
Western District of Louisiana, Shreveport
Division.

United States of America,

Plaintiff,

vs.

No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin,
Tutrix of Natalie Heilperin, John L. Hargrove, Frank-
lin Oil and Fuel Company, Humphrey Oil Company,
Pure Oil Operating Company, Standard Oil Company
of Louisiana,

Defendants.

And now comes the Standard Oil Company of Louisi-
ana, made one of the defendants in the above cause, and
availing itself of the reservations made in its answer, now
moves the Court to dismiss the bill in this cause as against
this defendant, because said bill does not state any matter
of equity entitling plaintiff to the relief prayed for, nor
are the facts as stated sufficient to entitle plaintiff to
any relief against this defendant.

Wherefore, this defendant prays the judgment of this
Court on the matter herein submitted, and that the suit
as against it be dismissed with cost.

J. C. PUGH & SON,

Solicitors for Standard Oil Co.
of La.

Indorsed: Motion to dismiss as to the Standard Oil
Company of Louisiana. Filed February 27, 1918.

F

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs.

No. 1154 In Equity.

W. W. Green, et als.

In this cause now into Court comes the Standard Oil Company, one of the defendants herein, through its solicitor, Judge J. C. Pugh, and files its Motion to dismiss herein.

Thereupon, this cause came on to be heard upon the motions to dismiss and upon the motions to strike out certain interrogatories, Mr. Wm. C. Barnette, and Judge J. C. Pugh appearing as solicitors for the defendants and Mr. Robert A. Hunter, Special Assistant to the Attorney General appearing as solicitor for the Complainant herein. The said motions were argued by counsel for either side and submitted, and thereupon the Court overruled the motions to dismiss, to which ruling of the Court defendants reserved a bill of Exceptions—the motion to strike out certain interrogatories being sustained by the Court, with leave for the Complainant herein to renew said interrogatories at such time as it may seem proper.

63 United States District Court, Western District
 of Louisiana.

United States,

vs.

No. 1154.

W. W. Green, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,
Judge.

(Seal)

March 29, 1918.

Filed Mar. 29, 1918.

63-A

PLFF "G"

R. B. COOK,
Stenographer.

United States,
vs. Suit No. 1154.
W. W. Green, et al.

Statement of the oil run from the land in question by the
Standard Oil Company of Louisiana from May 1912,
to August 1914 inclusive, and the division of the oil
and values.

Total oil run from the land in question.	Bbls. 12,584.22	Value. \$11,042.51
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Division of oil and values.

Humphrey Oil & Gas Company	6,551.11	\$ 5,199.58
Franklin Oil & Fuel Company	786.40	690.03
Pure Oil Operating Company	2,979.05	2,986.95
H. L. Heilperin	740.57	737.90
E. G. Palmer	740.61	737.95
W. W. Green	786.48	690.10
Total	12,584.22	\$11,042.51

Counter Claim.

Cost of operating well from January 1913
to August 1914 inclusive by the Pure Oil
Operating Company. \$ 3,997.03

No claim is asserted by the Humphrey Oil and Gas Co.
for drilling and operating the well.

The records of the Gulf Refining Co. of La. show that the first work done on the land leading to the discovery of oil was on February 24, 1912, when Green No. 1 was begun to be drilled.

Filed Jan. 21, 1919.

63-B GREENE COST OF OPERATION.

Suit No. 1154.

No. 1 cost of Operation Jan. 1913 to Aug. 1914 \$3,997.03

Pure Oil Operating Company.

Green No. 1.

Net Runs

Date.	Net Runs	Price Per Bbl.	Value.
1913			
February	546.98	.98	\$536.04
March	353.47	.98	346.40
April	337.42	.98	330.67
May	213.58	.98	209.31
June	210.57	.98	206.36
July	220.45	1.00	220.45
August	110.19	1.00	110.19
	110.28	1.05	115.79
September	98.83	1.05	103.77
October	205.33	1.05	215.60
November	103.13	1.05	108.29
December	100.75	1.05	105.79
1914.			
January			
February			

March	97.19	1.05	102.05
April	99.02	1.05	103.97
May	75.30	1.05	79.07
June	55.62	1.05	58.40
July			
August	40.94	.85	34.80
	2,979.05		\$2,986.95

February 9, 1913, First Run,
August 19, 1914, Last Run.

64 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

Complainant,

vs.

No. 1154, In Equity.

W. W. Green et al,

Defendants.

In the above numbered and entitled cause, now comes the Pure Oil Operating Company, through W. J. Higgins, its Treasurer, a proper Officer of the said corporation for the answering of interrogatories to it herein, and answers, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Green No. 1 was drilled by the Humphrey Oil & Gas Company, as lessee of W. W. Green.

To Interrogatory No. 2, defendant answers:

This defendant does not know when said well was commenced, it was operated by the Humphrey Oil & Gas Company from August 3rd, 1912, until it was acquired by H.

L. Heilperin and E. G. Palmer on December 17th, 1912, who operated same until January 16th, 1913, when it was surrendered to this defendant, the lessee from Lydia Hanszen et al of the tract of land of which the property in controversy forms part, and was operated by this defendant up to August 1st, 1914.

To Interrogatory No. 3, defendant answers:

The proceeds of the sale of oil from said well was converted to the use and benefit of the defendants in this cause, subsequent to the surrender of said well to this defendant.

To Interrogatory No. 4, defendant answers:

Said well was operated by the Pure Oil Operating Company in the production of oil from January 16th, 1913, to August first, 1914, when it ceased to produce.

65 To Interrogatory No. 5, defendant answers:

Not having information relative thereto, defendant is unable to answer this interrogatory except to state that the said well was drilled by the Humphrey Oil & Gas Company on the property in controversy, that later the said well and the said tract was sold to E. G. Palmer and H. L. Heilperin, and that the said Palmer and Heilperin transferred their interest therein to the Pure Oil Operating Company, and that said well was operated by the latter Company from January 16th, 1913, until August first, 1914, when same ceased to produce.

To Interrogatory No. 7, defendant answers:

Copies are attached hereto of agreements of date December 17th, 1912, and January 16th, 1913.

To Interrogatory No. 8, defendant answers:

The production from said well run for account of this defendant (11/16 of 7/8) from January 16th, 1913, to August 1st, 1914 (date of last run) was 2,979.05 barrels of the value of \$2,986.95; 5/16 of 7/8 being run for account of the said Heilperin and Palmer; the remaining 1/8 being run for account of the said W. W. Green and the Franklin Oil & Gas Company.

To Interrogatory No. 9, defendant answers:

As an entity.

To Interrogatory No. 10, defendant answers:

A separate and complete record was kept by this defendant of the oil produced by said well for its account (11/16 of 7/8), from monthly statements rendered to it by the Standard Oil Company of Louisiana, who purchased said oil from said well.

To Interrogatory No. 11, defendant answers:

The production as given by defendant in its answer to the bill of complaint and in answer to the preceding interrogatories is exact and is the quantity of oil purchased from this defendant by the Standard Oil Company of Louisiana from the well in controversy.

To Interrogatory No. 12, defendant answers:

The value of the oil produced from said well for account of this defendant was \$2,986.95. The value as given

is exact and is the value of defendant's 11/16
66 of 7/8 of the production during the period of
from Jan. 16th, 1913, to August first, 1914, at
posted pipe line prices at the date of the purchase of said
oil, same being at prevailing price of oil in the field at
such date.

To Interrogatory No. 13, defendant answers:

During the time the well was operated by this defendant, its entire production was sold to the Standard Oil Company of Louisiana.

To Interrogatory No. 14, defendant answers:

The entire production of said well was sold to the Standard Oil Company of Louisiana; defendant's 11/16 of 7/8 of the production during the period from Jan. 16th, 1913, to August first 1914, amounting to 2,979.05 barrels.

To Interrogatory No. 15, defendant answers:

Not having information relative thereto defendant is unable to answer this interrogatory except to report that it received from the Standard Oil Company of Louisiana \$2,986.95 for its proportion of said production.

To Interrogatory No. 16, defendant answers:

Yes.

To Interrogatory No. 17, defendant answers:

The quantity of oil taken away and removed from the property in controversy from Jan. 16th, 1913, to August

first, 1914, for account of this defendant, by the Standard Oil Company of Louisiana, was 2,979.05 barrels (or 11/16 of 7/8 of the entire production during said period.)

To Interrogatory No. 18, defendant answers:

Yes.

To Interrogatory No. 19, defendant answers:

The oil referred to in the answer of the Standard Oil Company of Louisiana to the bill of complaint herein was taken from the property in controversy in this cause, 2,979.05 barrels of which of the value of \$2,986.95, was run for account of this defendant (or 11/16 of 7/8 of the entire production of said well from January 16th, 1913, to August first, 1914.)

67 To Interrogatory No. 20 defendant answers:

Not having information relative thereon defendant is unable to answer this interrogatory except to report that \$2,986.95 of said sum of \$10,352.41 has been received by it from the Standard Oil Company of Louisiana for its 11/16 of 7/8 of the production of said well during said period of from Jan. 16th, 1913, to August first, 1914, and that no part of said \$690.10 is being held for payment to this defendant.

To Interrogatory No. 24, defendant answers:

The entire cost to this defendant of operating the said well, during the period that it was operated by it, was, \$2.697.80.

Received by this defendant from the Standard Oil Company of Louisiana for the value of its 11/16 of 7/8 of the production of oil from said well during the period that it was operated by this defendant Jan. 16th, 1913, to August 1st, 1914). \$2,986.95

Or a profit of \$289.15

To Interrogatory No. 25, defendant answers:

Defendant paid no royalty out of the production from said well. It sold its 11/16 of 7/8 (Heilperin and Palmer selling their 5/16 of 7/8 and W. W. Green and the Franklin Oil & Gas Company selling their 1/8) of the production during the period of from Jan. 16th, 1913, to August first, 1914 (date of last run) to the Standard Oil Company of Louisiana and received therefrom the sum of \$2,986.95; no amount being held to the credit of this defendant pending the result of this suit.

W. J. HIGGINS.

Sworn to and subscribed before me on this the 13th day of April, 1918.

HILDA R. SAUER,
(Seal) Notary Public in and for Allegheny County, Penna.

My Commission expires at the end of Next Session of Senate.

State of Louisiana,
Parish of Caddo.

Be it known, that this day before me, J. A. Thigpen, Notary Public in and for said Parish, duly commissioned and sworn, came and appeared the Humphrey Oil & Gas Company, a corporation organized under the laws of the State of Illinois, and domiciled at Chicago, Ill., with John Cudahy as its President, and represented herein by Evan Humphrey, its secretary, agent and attorney in fact, authorized as per resolution of the Board of Directors of said Company, a copy of which is hereto attached, who declared that it does by these presents grant, bargain, sell, transfer, convey and deliver, with full warranty of title, and with complete subrogation of all rights and actions against former proprietors, unto H. L. Heilperin, husband of Fannie Bluestein, and E. G. Palmer, husband of Mabel Mitchell, both residents of Shreveport, La., purchasing equally, the following property situated in Caddo Parish, La., to-wit:

All of the drilling machinery, pipe and accessories owned by the said Humphrey Oil & Gas Company, and used by it in operating in the Caddo Oil Field, a list, inventory and description of which said property is, with the signing of this act, delivered by the said vendor to these vendees; it being distinctly understood and agreed that these vendees acquire all of the machinery, pipe, oil and gas well appliances and accessories owned and used by the said vendor in the Caddo Oil Field, whether especially enumerated in said list or not.

And the said vendor declares that this sale includes all of the oil in tankage in the Caddo Oil Field owned by the said Humphrey Oil & Gas Company. But it is

expressly agreed that this sale does not include any oil run or delivered previous to the signing of this agreement of sale.

And the said vendor declares that it further sells, conveys, transfers and delivers, with full warranty of title, unto the said vendees that certain oil well drilled by this vendor on that certain strip of ground known as the "Green Mineral Location", which said leased land is specifically described in that certain lease granted by W. W. Green and John L. Hargrove to J. G. Johns, as recorded in Conveyance Book 72, page 343 of the records of Caddo Parish, La., which said lease was assigned by the said Johns to this vendor, as per act in Conveyance Book 72, page 343, of the records of Caddo Parish, La., this sale including all of the machinery, pipe, boilers, tanks and all other material and equipment on said leased lands and at said well, whether used in operating said well or not.

And the said vendor herein further transfers and assigns to these vendees all of its right, title and interest in and to the said above mentioned lease granted by W. W. Green and John L. Hargrove to J. G. Johns, and described in the act recorded in Conveyance Book 72, page 343, of the records of Caddo Parish, La.; said lease covering a strip of ground known as the "Green Mineral Location."

It is especially understood and agreed between the parties hereto that the vendees herein in purchasing said oil well, and the right, title and interest of this vendor in and to said lease, do not in any manner obligation themselves to drill any further wells on said property; but do obligate and agree to deliver to John L. Hargrove and W. W. Green the one-eighth royalty oil of all the oil that may be saved from that produced from the said well already drilled on said land and acquired by them under this sale, provided, and only, in the event that the said W. W. Green and John

L. Hargrove, establish their title and ownership to said leased lands.

To have and to hold said described property unto said purchasers, their heirs and assigns forever.

This sale is made for the consideration of the sum of Five Thousand (\$5,000.00) Dollars, cash in hand paid, receipt of which is hereby acknowledged.

69 Thus done and signed in the City of Shreveport, Caddo Parish, La., on this the 17th day of December, 1912.

HUMPHREY OIL & GAS CO.
Per EVAN HUMPHREY,
Secretary, Agent & Attorney.
J. A. THIGPEN, Notary.

Attest:

C. KELLER,
J. F. SLATTERY.

70 State of Louisiana,
 Parish of Caddo.

This agreement, by and between H. L. Heilperin and E. G. Palmer of Shreveport, La., of the one part and the Pure Oil Operating Company, a corporation represented herein by its agent, S. L. Cronin, of the other part, Witnesseth: that,

Whereas the Pure Oil Operating Company holds under a lease from Miss Lydia Hanszen and others a tract of land in Section Three (3) and Four (4), Township Twenty (20), Range Sixteen (16), commonly known as the Hanszen- Mason 87-Acre Mineral File; and

Whereas H. L. Heilperin and E. G. Palmer have acquired from the Humphrey Oil & Gas Company an oil

well, with all the equipment and material pertaining to same, drilled by the said Humphrey Oil & Gas Company on a strip of land known as the "Green File", which said strip is claimed by the said Miss Hanszen and others and by the said Pure Oil Operating to be within the limits of the said 87-Acre Mineral File located by the said Miss Hanszen and others;

Now, therefore, in order that the said oil well may be operated and in full compromise of all rights of the respective parties hereto relative to said well, but with the distinct understanding that by this agreement the Pure Oil Operating Company does not in any manner acknowledge the claim of C. G. Green and J. L. Hargrove to the said strip of ground known as the "Green Mineral File", and without any prejudice as against the claims of Miss L. Hanszen and others for royalties from the said well known as "Green No. 1", as well as such other wells as may hereafter be drilled by the Pure Oil Operating Company, if any, on the strip of ground covered by the so-called "Green Mineral Location", the said parties hereto have and do hereby agree as follows:

The Pure Oil Operating Company obligates and agrees to take charge of and operate the said well, in consideration of retaining in full compensation for its services in taking care of and operating said well, and in full compromise of its right under its claim that same is drilled on said 87-Acre file, eleven-sixteenths of seventh-eighths ($11/16$ of $7/8$) of all oil that may be saved from that produced therefrom.

And the Pure Oil Operating Company further agrees to deliver the remaining portion of such oil as may be produced, that is fifty-one/one hundred and twenty-eighths ($51/128$) to H. L. Heilperin and E. G. Palmer.

And regardless of the manner in which the question of title to said strip may hereafter be settled and determined, that is to say, whether the said strip be held to be property of Miss L. Hanszen and others, as embraced in the 87-Acre Location of Miss L. Hanszen and others, or whether said strip be held to belong to C. G. Green and his co-claimant, J. L. Hargrove, said well shall at all times, as long as it can be made to produce oil in paying quantities, be operated under this agreement, that is to say, the Pure Oil Operating Company to operate said well and take care of all expense incident thereto, and furnish all material necessary therefor, and receive therefrom eleven-sixteenths of seven-eighths ($11/16$ of $7/8$) of the production therefrom, and to pay to the said Heilperin and Palmer the remaining portion of the production therefrom.

It is especially agreed and understood that the Pure Oil Operating Company shall not be in any manner liable to Green and Hargrove for the royalties provided under lease of the said Green and Hargrove to the Humphrey Oil & Gas Company, under which said lease said well was drilled; and the said Heilperin and Palmer obligate and agree in favor of the said Pure Oil Operating Company that they will hold the said Pure Oil Operating Company harmless from any claim on account of said royalty.

71 But both of the parties hereto further agree that if for any reason, on account of the several contracts and leases that have been entered into regarding said land, a royalty should be held to be due to both Miss Hanszen and her associates and the said Green and Hargrove, then whatever royalty is held to be due to both of the said parties in excess of one-eighth shall be paid by the parties hereto in equal proportions; the parties hereto contemplating that some portion, if not

all, of the royalty from said well heretofore claimed by Miss Hanszen and others will be waived and released. But if all of said royalties is not waived, and a royalty in excess of one-eighth ($1/8$ of all the oil saved from that produced should, as heretofore stated, be due out of the oil saved from said well, then said excess royalty shall be taken care of and paid as above provided.

In further consideration of this agreement, the said Heilperin and Palmer hereby sell, transfer, and convey unto the Pure Oil Operating Company all of the material in said well and all of the equipment pertaining to same, except $2\frac{1}{2}$ inch pipe where lose or in lines, the said $2\frac{1}{2}$ inch pipe not being conveyed under this agreement; and, also, except all of the two inch pipe about said well, reserving, however, to the Pure Oil Operating Company a sufficient amount of two inch pipe for two lines from the said well to the tanks connected therewith, and a sufficient amount for one from said "Green Well No. 1", to the nearest oil well of the Pure Oil Operating Company.

It is especially agreed by and between the parties hereto, and is made part of this agreement and sale, that the Pure Oil Operating Company shall continue to operate said well under the terms and agreements as herein fixed, as long as the said well can be made to produce oil in paying quantities to both parties hereto.

Executed in Shreveport, La., in duplicate, on this the sixteenth day of January, 1913.

H. L. HEILPERIN,

E. G. PALMER,

J. A. THIGPEN, Notary Public.

Attest:

S. L. HEROLD;

C. KELLER.

Indorsed: Answer of Pure Oil Operating Co. to Interrogatories. Filed Apr. 20, 1918.

72 In the District Court of the United States for the Western District of Louisiana.

United States of America,
Complainant,
vs. No. 1154 In Equity.

W. W. Green et al,
Defendants.

In the above numbered and entitled cause, now comes E. G. Palmer and answers under oath the interrogatories to him herein propounded, as follows, to-wit:

To Interrogatory No. 1, he answers:

Well known as "Green No. 1" was drilled by the Humphrey Oil & Gas Company, as lessee of W. W. Green.

To Interrogatory No. 2, he answers:

Not having information relative thereto, I am unable to answer this interrogatory except to report that said well was completed before December 17th, 1912, when same was purchased by Mr. Heilperin and myself; and that same was operated by the Pure Oil Operating Company from the date of its purchase from us, January 16th, 1913, until it ceased to produce, August, 1914.

To Interrogatory No. 3, defendant answers:

Said well was producing oil on December 17th, 1912, when same was purchased by Mr. Heilperin and myself, and from that date until it ceased to produce, proceeds from the sale thereof was converted to the use and benefit of the defendants herein in the proportion of their ownership thereof.

To Interrogatory No. 4, he answers:

Said well was being operated by the Humphrey Oil & Gas Company when same was purchased by Mr. Heilperin and myself; it was operated by the Pure Oil Operating Company from the date of its acquisition, January 16th, 1913, until it ceased to produce, August, 1914.

To Interrogatory No. 5, he answers:

Said well was operated by the Humphrey Oil & Gas Company until it sold same, December 17th, 1912, and by the Pure Oil Operating Company from the date of its acquisition, January 16th, 1913, until it ceased to produce.

73 To Interrogatory No. 6, defendant answers:

There is attached hereto copy of said agreement of date January 16th, 1913.

To Interrogatory No. 8, he answers:

5/32 of 7/8 of the production from said well from December 17th, 1912, to August, 1914, (being amount run for my account) was 740.61 barrels of the value of \$737.95.

To Interrogatory No. 9, he answers:

I do not know.

To Interrogatory No. 10, he answers:

Not having information relative thereto, I am unable to answer this interrogatory.

To Interrogatory No. 11, he answers:

The number of barrels of oil run for account of myself and the value thereof is based upon monthly statements of runs as furnished by the Standard Oil Company of Louisiana.

To Interrogatory No. 12, he answers:

Not having information relative thereto I am unable to answer this interrogatory except to report that the value as given was the amount received by me from the Standard Oil Company of Louisiana for my proportion of the oil run from said well.

To Interrogatory No. 13, he answers:

Standard Oil Company of Louisiana.

To Interrogatory No. 14, he answers:

Not having information relative thereto I am unable to answer this interrogatory except to report that 5/32 of 7/8 of the oil extracted from the land in controversy from December 17th, 1912, to August, 1914 (my proportion thereof) was 740.61 barrels.

To Interrogatory No. 15, he answers:

I received from the Standard Oil Company of Louisiana \$737.95 for said 740.61 barrels of oil.

To Interrogatory No. 16, he answers:

Yes.

74 To Interrogatory No. 17, defendant answers:

The quantity of oil taken away and removed from the property in controversy, for account of myself, was 740.61 barrels, of the value of \$737.95.

To Interrogatory No. 18, he answers:

Yes.

To Interrogatory No. 19, he answers:

The oil referred to in the answer of the Standard Oil Company of Louisiana to the bill of the complaint herein was taken from the property in controversy in this cause, 740.61 barrels being taken for my account, of the value of \$737.95.

To Interrogatory No. 20, he answers:

Not having information relative thereto, I am unable to answer this interrogatory except to report that \$737.95 of said sum of \$10,352.41 has been received by me from the Standard Oil Company of Louisiana and that no part of said sum of \$690.10 is being held for payment to me.

To Interrogatory No. 24, he answers:

Mr. Heilperin and I purchased the Green well, together with pipe; fittings, etc., for the sum of \$5,000.00, my $\frac{1}{2}$ \$2,500.00;

My one-half of approximate amount received from the sale of pipe, etc., \$2,119.78;
My receipts from sale of oil.. 737.95; 2,857.73

Or a net profit of \$357.73

To Interrogatory No. 25, he answers:

I paid no royalty out of the production from said well. I sold my $\frac{5}{32}$ of $\frac{7}{8}$ of the production of said well to the Standard Oil Company of Louisiana, 740.61 barrels, and received therefor \$737.95. No amount is being held for my credit pending the result of this suit.

E. G. PALMER.

Sworn to and subscribed before me on this the 10th day of April, 1918.

(Seal) J. A. THIGPEN,
Notary Public in and for Caddo Parish, Louisiana.

75 Agreement between H. L. Heilperin and E. G. Palmer, and Pure Oil Operating Company omitted from printed record, being copied at page 94.

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Indorsed:—Answer of E. G. Palmer to Interrogatories. Filed Apr. 20, 1918.

77 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1154, In Equity.
W. W. Green, et al., Defendant.

In the above numbered and entitled cause, now comes Mrs. Fannie B. Heilperin and answers under oath the interrogatories to her herein propounded, as follows, to-wit:

To Interrogatory No. 1, she answers:

Well known as "Green No. 1" was drilled by the Humphrey Oil & Gas Company, as lessee of W. W. Green.

To Interrogatory No. 2, she answers:

Not having information relative thereto, I am unable to answer this interrogatory except to say that said well was completed prior to December 17th, 1912, when same was purchased by E. G. Palmer and Mr. Heilperin, and that same was operated by the Pure Oil Operating Company from the date of its purchase from Mr. Palmer and Mr. Heilperin, January 16th, 1913, until said well ceased to produce, August, 1914.

To Interrogatory No. 3, defendant answers:

Said well was producing oil on December 17th, 1912, when it was purchased by Mr. Palmer and Mr. Heilperin, and from that date until said well ceased to produce proceeds from the sale thereof was converted to the use and benefit of the defendants herein in the proportion of their ownership thereof.

To Interrogatory No. 4, defendant answers:

Said well was being operated by the Humphrey Oil & Gas Company when same was purchased by Mr. Palmer and Mr. Heilperin. It was operated by the Pure Oil Operating Company from the date of its acquisition from Mr. Palmer and Mr. Heilperin, January 16th, 1913, until it ceased to produce, August, 1914.

78 To Interrogatory No. 5, she answers:

Said well was being operated by the Humphrey Oil & Gas Company at the time it sold same to Mr. Palmer and Mr. Heilperin. It was operated by the Pure Oil Operating Company from the date of its acquisition from Mr. Palmer and Mr. Heilperin, January 16th, 1913, until said well ceased to produce.

To Interrogatory No. 6, she answers:

There is attached hereto copy of said agreement of date January 16th, 1913.

To Interrogatory No. 8, she answers:

5/32 of 7/8 of the production from said well from December 17th, 1912, to August, 1914 (being amount run for account of Mr. Heilperin) was 740.57 barrels of the value of \$737.90.

To Interrogatory No. 9, she answers:

I do not know.

To Interrogatory No. 10, she answers:

Not having information relative thereto, I am unable to answer this interrogatory.

To Interrogatory No. 11, she answers:

The number of barrels of oil run for account of Mr. Heilperin and the value thereof is based upon monthly statements of runs as furnished by the Standard Oil Company of Louisiana.

To Interrogatory No. 12, she answers:

Not having information relative thereto, I am unable to answer this interrogatory except to report that the value as given was the amount received by Mr. Heilperin from the Standard Oil Company of Louisiana for his proportion of the oil run from said well.

To Interrogatory No. 13, she answers:

Standard Oil Company of Louisiana.

To Interrogatory No. 14, she answers:

Not having information relative thereto I am unable to answer this interrogatory except to say that 5/32 of 7/8 of the oil extracted from the land in controversy from December 7th, 1912, to August, 1914 (Mr. Heilperin's proportion thereof) was 740.57 barrels.

79 To Interrogatory No. 15, she answers:

Mr. Heilperin received from the Standard Oil Company of Louisiana \$737.90 for said 740.57 barrels of oil.

To Interrogatory No. 16, she answers:

Yes.

To Interrogatory No. 17, she answers:

The quantity of oil taken away and removed from the land in controversy, for account of Mr. Heilperin, was 740.57 barrels, of the value of \$737.90.

To Interrogatory No. 18, she answers:

Yes.

To Interrogatory No. 19, she answers:

The oil referred to in the answer of the Standard Oil Company of Louisiana to the bill of complaint herein was taken from the property in controversy in this cause, 740.57 barrels being taken for account of Mr. Heilperin, of the value of \$737.90.

To Interrogatory No. 20, she answers:

Not having information relative thereto, I am unable to answer this interrogatory except to report that \$737.90 of said sum of \$10,352.41 was received by Mr. Heilperin from the Standard Oil Company of Louisiana and that no part of said sum of \$690.10 is being held to his credit.

To Interrogatory No. 24, she answers:

Mr. Heilperin and Mr. Palmer purchased the Green well, together with pipe, fittings, etc., for the sum of \$5,000.00, Mr. Heilperin's one-half being	\$2,500.00
--	------------

Mr. Heilperin's one-half of approximate amount received from the sale of pipe, etc.	\$2,119.78;
--	-------------

Mr. Heilperin's receipts from the sale of oil,	737.90; 2,857.68
--	------------------

Or a net profit of	<u>\$ 357.68</u>
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80 To Interrogatory No. 25, she answers:

Mr. Heilperin paid no royalty out of the production from said well. He sold his $\frac{5}{32}$ of $\frac{7}{8}$ of the production of said well to the Standard Oil Company of Louisiana, or 740.57 barrels, and received therefor \$737.90. No amount is being held for account of Mr. Heilperin pending the result of this suit.

FANNIE B. HEILPERIN.

Sworn to and subscribed before me on this the 20th day of April, 1918.

(Seal)

J. A. THIGPEN,

Notary Public in and for Caddo
Parish of Louisiana.

81 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,

vs.

No. 1154 In Equity.

W. W. Green, et al, Defendant.

For defendant, Standard Oil Company of Louisiana, it is urged for exception to the Report of Special Master:

First: That all of said parties are co-defendants with this defendant, and in its original answer it called them in warranty, and the final judgment to be rendered herein should award to this defendant a judgment in warranty against its co-defendants for the amount shown to have been paid them, as such a judgment would avoid a multiplicity of suits; and in any event, this defendant's right of action to recoup from its co-defendants should be reserved.

Second: That the amount due by this defendant, as fixed by the Special Master, stipulates that it should draw five per cent (5%) interest from the time of the filing of his Report, and this defendant urges that interest should only run from the finality of any judgment rendered.

Wherefore, it prays that these exceptions be sustained and the recommendations of the Special Master be revised accordingly.

J. C. PUGH & SON,
Attorney for Defendant, Standard
Oil Company of La.

Indorsed:—Exception to Report of Special Master.
Filed Jany. 23.

82 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1154 In Equity.

W. W. Green, et al., Defendants.

Now comes the Pure Oil Operating Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has reported and certified that the land in controversy was validly withdrawn from mineral

location at the date of the drilling of the well; whereas he should have certified and reported that the property in controversy is part of the mineral location made by Lydia Hanszen and others, on April 2nd, 1910, which location was perfected before any withdrawal of the land from entry, under the placer mining laws of the United States.

2.

That the Master has reported and certified that the cost to this defendant of the operation of the well in controversy was \$2,677.80; whereas he should have reported and certified such expense to have been \$3,997.03.

3.

That the Master has reported and certified that this defendant should be held liable for money judgment in the sum of \$289.15; whereas he should have reported and certified that even if the Government is entitled to recover the land in controversy, it is not entitled to any money judgment against this defendant.

4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Pure Oil Operating Co.

Indorsed:—Exception of the Pure Oil Operating Company to the Report of the Special Master. Thigpen & Herold; Solicitors. Filed January 30, 1919.

84 In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1154 In Equity.
W. W. Green, et al., Defendants.

Now come E. G. Palmer and Mrs. H. L. Heilprein, two of the defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has reported and certified that the land in controversy was validly withdrawn from mineral location at the date of the drilling of the well; whereas he should have certified and reported that the property in controversy is part of the mineral location made by Lydia Hanszen and others, on April 2nd 1910, which location was perfected before any withdrawal of the land from entry, under the placer mining laws of the United States.

2.

That the Master has reported and certified that the cost of the operation of the well in controversy was \$2,697.80; whereas he should have reported and certified such expense to have been \$3,997.03.

3.

That the Master has reported and certified that defendant E. G. Palmer should be held liable for a money judgment in the sum of \$737.95 and defendant H. L. Heilperin, \$737.90; whereas he should have reported and certified that even if the Government is entitled to recover the land in controversy, it is not entitled to any money judgment against these defendants.

4.

That the Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five
85 (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,
Solicitors for E. G. Palmer and Mrs.
H. L. Heilperin.

Indorsed:—Exceptions of E. G. Palmer and Mrs. H. L. Heilperin to the Report of the Special Master. Filed January 30, 1919.

86 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1154.

W. W. Green, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et als., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A," "B," "C," "D," "E," "F-1, 2, 3, 4, 5," "G,"

"H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," which said exhibits were by agreement of counsel (record, p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 20 N., Range 16 W, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

2. As stated in the Master's report, the mineral location in this cause was made April 25, 1910. The statement prepared by James W. Neal, Special Agent of the General Land Office, sworn to by said Neal, and offered in evidence by plaintiff (plaintiff's exhibit "G" attached and bound with the original copy of the testimony herein), shows that the first work done on the land, leading to the discovery of oil, was February 24, 1912, when the well, known as "Green No. 1", was begun, and plaintiff avers that the drilling of said well, and the removal of the oil therefrom were in violation of both said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the Government from the drilling and operation of the wells.

4. There was affirmative evidence in the record showing that the defendants were not in good faith in extracting and removing the oil from the land in controversy, because the record shows that the defendants, including the Pure Oil Operating Company (which said Company

asserted counterclaim allowed by the Master), gave bonds to the Standard Oil Co. of Louisiana to protect said Company against adverse claims to the property and to the oil. The bond executed by the Pure Oil Operating Co., for sum of \$125,000.00, contains a specific agreement to indemnify and hold harmless the Standard Oil Company of Louisiana from liability to the United States of America (see bond attached to answer of the Standard Oil Company of Louisiana to the bill of complaint and answer of the said Standard Oil Company of Louisiana, to the interrogatories filed herein).

5. That the well in question was drilled by the Humphrey Oil Co., which company has made no appearance herein, and that the counterclaim filed
88 by the Pure Oil Operating Co. relates only to the cost of operation of said well, which, as aforesaid, was drilled after the issuance of said withdrawal orders.

6. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove or attempt to approve that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

7. Plaintiff avers that the Master in his report states that the Standard Oil Company of Louisiana paid to the "Pierce Oil Company" as royalty the sum of \$2986.95, and that he recommended a decree against the Pierce Oil Company and the Standard Oil Company of Louisiana, in solido, for \$289.15, "being the difference between the value of production received by the Pierce Oil Co. and the counterclaim of that Company." Plaintiff shows that through error the Master referred to the Pure Oil Operating Company as the "Pierce Oil Co.," and that the Master erred in allowing the counterclaim of the Pure Oil Operating Company, amounting to \$2697.80. Plaintiff shows that the United States should recover from the Standard Oil Company of Louisiana and the Pure Oil Operating Company, in solido, the full amount paid to the Pure Oil Operating Company by the Standard Oil Company of Louisiana, without any deduction whatever.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree, in addition to the amounts allowed in the Master's report, in favor of the United States and against the Standard Oil Company of Louisiana and the Pure Oil Operating Company, in solido, in the sum of \$2986.95.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and be made the decree of this Honorable Court. Prays for all orders necessary and for general relief.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

90 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America,

vs. No. 1154 In Equity.

W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin,
Tutrix of Natalie Heilperin, Franklin Oil & Fuel Com-
pany, Humphrey Oil Company, Pure Oil Operating
Company, Standard Oil Company of Louisiana, John
L. Hargrove.

This cause came on to be heard at this term and was
argued by counsel; and thereupon, upon consideration
thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by
E. H. Randolph, Special Master-in Chancery, be and the
same is hereby approved and confirmed; and, according-
ly:

II. That the land described in the bill of complaint,
namely, Lot Three (3), of Section Three (3), and Lots
Four (4) and Five (5), of Section Four (4), in Town-
ship Twenty (20) North, Range Sixteen (16) West, Lou-
isiana Meridian, Louisiana, situated in the Parish of Cad-
do, Western District of Louisiana, containing twenty-five
and ninety-one hundredths (25.91) acres, as shown by
plat of survey approved March 28, 1917, by Clay Tallman,
Commissioner of the General Land Office and ex-officio
Surveyor General for the State of Louisiana, be and the
same are hereby decreed to have been at all times from
and after December 15, 1908, lawfully withdrawn from
settlement, entry, location, sale or other form of appropri-
ation under the public land or mineral laws of the United
States.

III. That the mineral location made by W. W. Green, recorded May 9, 1910, in Book 59, page 431, of the Conveyance records of the Parish of Caddo, State of Louisiana, and the lease of the land therein described by the said W. W. Green, December 27, 1911, to J. G. Johns, and the transfer of said lease by J. G. Johns to the Humphrey Oil & Gas Company, as well as any other mineral location, lease, deed, transfer, or other instrument of writing, under which the said defendants may claim the said land, be and the same are declared null, void and held for naught, insofar as the said mineral locations, leases and other instruments of writing, may include directly or indirectly the above described property, and, to that extent, the said mineral locations, leases and transfers are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, W. W. Green, E. G. Palmer, John L. Hargrove, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Franklin Oil & Fuel Company, Pure Oil Operating Company, Standard Oil Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom,

and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Standard Oil Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Five Thousand, One Hundred and Ninety-nine and 58/100 (\$5,199.58) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Pure Oil Operating Company and the Standard Oil Company of Louisiana, in solido, and the said defendants are hereby condemned and
92 ordered to pay to plaintiff, the full sum of Two Hundred and Eighty-nine and 15/100 (\$289.15) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Standard Oil Company of Louisiana and the Franklin Oil & Fuel Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Six Hundred and Ninety and 03/100 (\$690.03) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of and from the Standard Oil Company of Louisiana and Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, in solido. and the said defendants are hereby

condemned and ordered to pay to plaintiff, the full sum of Seven Hundred and Thirty-seven and 90/100 (\$737.90) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of and from the Standard Oil Company of Louisiana and W. W. Green, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Six Hundred and Ninety and 10/100 (\$690.10) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of and from the Standard Oil Company of Louisiana and E. G. Palmer, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Seven Hundred and Thirty-seven and 95/100 (\$737.95) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XIII. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XIV. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of One Thousand (\$1000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all the property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and

control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XV. That the rights of the Standard Oil Company of Louisiana against its warrantors be, and the same are hereby reserved.

Thus done, read and signed in open Court this 4th day of August, 1918.

RUFUS E. FOSTER,
United States Judge.

Indorsed :—Decree. Filed Aug. 12, 1919.
B.

95 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1154 In Equity.
W. W. Green, et al., defendants.

The petition of E. G. Palmer, Mrs. H. L. Heilperin, individually and as tutrix, Pure Oil Operating Company, defendants herein, shows:

1.

That they are aggrieved by the decree entered herein and signed by your Honor on the day of August, 1919, wherein the Pure Oil Operating Company is condemned to pay to the plaintiff the sum of Two Hundred and Eighty-nine & 15/100 (\$289.15) Dollars, together with five per cent per annum interest thereon from January 11th, 1919, and your defendants, E. G. Palmer and Mrs. H. L. Heilperin the sums of Seven Hundred and Thirty-seven & 95/100 (\$737.95) and Seven Hundred and Thirty-seven & 90/100 (\$737.90) Dollars, respectively, with like interest, in solido with the Standard Oil Company of Louisiana; and avers that error has been committed in the rendering of the said decree in this, to-wit:

2.

That the Court erred in confirming the report of the Master to the effect that the cost of operating the well in controversy, upon the part of the Pure Oil Operating Company under its agreement with its co-defendants, Heilperin and Palmer, amounted to Twenty-six Hundred and Ninety-seven & 80/100 (\$2,697.80) Dollars, whereas according to the uncontradicted testimony of the special agent, James W. Neal, as shown on page 6 of the note of evidence, such cost amounted to Thirty-nine Hundred and Ninety-Seven & 3/100 (\$3,997.03) Dollars, which said amount the defendants were entitled to offset as against the value of the oil produced from said well, instead of said sum of \$2,697.80.

3.

And defendants, Heilperin and Palmer, show that the Court erred in holding them liable in any amount when

the cost of drilling, equipping and operating the said well, according to the uncontradicted testimony, exceeded the value of the oil extracted therefrom.

Wherefore, petitioners pray for a rehearing of this cause, submitting themselves to any order that may be made by your Honor should the petition be finally denied.

THIGPEN & HEROLD,

Solicitors for Defendants.

ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next terms of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,

United States District Judge.

August 4, 1919.

Indorsed:—Petition for Rehearing. Filed Aug. 13, 1919.

97 714.

Chancery Order Book.

Vol. 5.

United States District Court for the Western District of
Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,

vs.

No. 1154 In Equity.

W. W. Green, et al.

In this cause the Motion for Re-hearing which was heretofore filed, came on this day for hearing before Hon.

Rufus E. Foster, the plaintiff being represented by Robert A. Hunter, and the Defendant by S. I. Herold, after argument, and consideration by the Court,

It is ordered, that this Motion be overruled.

98 In the District Court of the United States for
 the Western District of Louisiana.

United States of America,

vs. No. 1154 In Equity.

W. W. Green, et al.

To the Honorable, the Judge of the District Court of
the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit,

and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney
General.

99

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, Plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S AP-
PEAL.

100 In the District Court of the United States for
the Western District of Louisiana.

United States of America,
vs. No. 1154 In Equity.
W. W. Green, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says

that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Pure Oil Operating Company for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an off-set or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled after the issuance of both of said withdrawal orders, in violation thereof, and in contravention of the policy of the United States, to protect the public
 101 interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil.

IV.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim of the Pure Oil Operating Company, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff, and against Defendants, for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney
General.

Indorsed:—Plaintiff's Petition for Appeal, Order Allowing Same and Assignment of Errors. Filed Jan. 3, 1920.

102 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1154.

W. W. Green, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal, in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered, viz: 1156, 1159, 1168, 1170 and 1171, were consolidated in the District Court for trial with the case entitled United States vs. Sam W. Mason, et al., No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by
 103 plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendants, on the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the

United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time, as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Answer of Pure Oil Operating Company.
3. Answer of E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin.
4. Answer of Standard Oil Company of Louisiana, including bonds and other exhibits thereto annexed.
5. Plaintiff's reply to set-off and counterclaim.
6. Amended answer of Pure Oil Operating Company.
7. Plaintiff's reply to counterclaim set up in defendant's amended answer.
8. Standard Oil Company's motion to strike out interrogatories.
9. Interrogatories propounded by plaintiff.
10. Answer of Standard Oil Company to interrogatories.
11. Motion to take bill pro confesso as to John L. Hargrove, Franklin Oil & Fuel Co., and W. W. Green, and order thereon.

12. Motion to dismiss as to the Standard Oil Company of Louisiana.

13. Order showing overruling of Motion to Dismiss.

14. Order appointing E. H. Randolph Special Master.

15. Statement marked "Plaintiff G" prepared and identified by James W. Neal, Special Agent of the General Land Office, showing quantity and value of oil, royalties paid, and cost of operating well in suit, together with all other information given in said statement.

104 16. Answer of Pure Oil Operating Company to interrogatories.

17. Answer of E. G. Palmer to interrogatories.

18. Answer of Mrs. Fannie B. Heilperin to Interrogatories.

19. Exception of Standard Oil Company to report of Special Master.

20. Exception of the Pure Oil Operating Company to report of Special Master.

21. Exceptions of E. G. Palmer, and Mrs. H. L. Heilperin to report of Special Master.

22. Plaintiff's exceptions to the Master's report.

23. Decree.

24. Petition for rehearing.

25. Order of Court overruling petition for rehearing.
26. Plaintiff's petition for appeal, order allowing same and assignment of errors.
27. This stipulation.

Thus done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

J. C. PUGH,
THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

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CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one hundred and four pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause entitled, United States of America, Plaintiff, vs. W. W. Green, et al., Defendants, No. 1154 on the Equity Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana, the said transcript having been prepared in accordance with stipulation of counsel, copy of which accompanies this transcript.

Witness my hand officially and the Seal of said Court at the City of Shreveport, Louisiana, on this 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk U. S. District Court,
for the Western District of Louisiana.

Citation omitted from the printed record, being copied in the original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3541.

THE UNITED STATES OF AMERICA
versus

W. W. GREEN et als.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellant, and S. L. Herold, Esq., for appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

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3
5

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3541.

THE UNITED STATES OF AMERICA

versus

W. W. GREEN et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

E. G. Palmer, Mrs. Fannie B. Heilperin, tutrix of Natalie Heilperin, Pure Oil Operating Company, and Standard Oil Company of Louisiana, appellees, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which

said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

Solicitors for E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company, and Standard Oil Company of Louisiana.

Order.

Let the foregoing petition be granted, and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Sixteen Thousand Five Hundred Dollars (\$16,500).

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Motion and Order for Severance.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company, and the Standard Oil Company of Louisiana, respectfully represent:

That they are condemned by opinion and decree herein made and entered on the 17th day of May, 1921, from which decree they desire to appeal.

That the other defendants herein are non-residents and have never made appearance herein, and that your petitioners are unable to ascertain from them whether or not they desire to appeal, and that petitioners' right to appeal should not be affected by the inaction of said other defendants, with whom they are not in privity.

Wherefore, they move and pray the Court to order a severance herein, so that they may prosecute their appeals.

(Signed)

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

T. M. MILLING,

Solicitors for E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company, and Standard Oil Co. of Louisiana.

Order.

It is hereby ordered that a severance herein be granted, and that the above named petitioners are permitted to prosecute their appeal without joinder by the other defendants.

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge United States Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

And now come E. G. Palmer, Mrs. Fannie B. Heilperin, tutrix of Natalie Heilperin, Pure Oil Operating Company, and Standard Oil Company of Louisiana, appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

. Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Pure Oil Operating Company, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in not reversing the judgment of the District Court which, under a manifest error, adjudged the costs of operating the well in controversy to be \$2,697.80, whereas, according to the uncontradicted testimony of the Special Agent of the Interior Department, as shown on page 6 of the note of evidence, such cost amounted to \$3,997.03, which said amount the defendants were entitled to deduct from the value of the oil produced from the well in controversy; and, such cost being in excess of the value of the oil extracted, to be relieved from any pecuniary liability.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,
versus

E. G. PALMER, Mrs. FANNIE B. HEILPERIN, tutrix of NATALIE HEILPERIN, Pure Oil Operating Company, and Standard Oil Company of Louisiana, Appellees.

Know all men by these presents, That we, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company and Standard Oil Company of Louisiana, as principals and National Surety Company, as surety, are held and firmly bound

unto and in favor of the United States of America, appellee, in the above cause, in the full sum of Sixteen Thousand Five Hundred (\$16,500.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, La., on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellant, and W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, John L. Hargrove, Franklin Oil & Fuel Company, Humphrey Oil Company, Pure Oil Operating Company and the Standard Oil Company of Louisiana were appellees, numbered on the Equity Docket 3541, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit; and the said E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Company and Standard Oil Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court.

Now if the said E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company, and Standard Oil Company of Louisiana shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed)

E. G. PALMER,
By S. L. HEROLD,

Attorney.

(Signed)

MRS. FANNIE B. HEILPERIN,
Tutrix of Natalie Heilperin,
By S. L. HEROLD,

Attorney.

(Signed)

PURE OIL OPERATING COMPANY,
By S. L. HEROLD,

Attorney.

(Signed)

STANDARD OIL COMPANY OF LA.,
By T. M. MILLING,

Attorney.

(Signed)

NATIONAL SURETY COMPANY,
By LOUIS COIRON,

Res. Vice-President.

Attest:

(Signed) LOUIS VALE,
[SEAL.] *Res. Asst. Secty.*

Approved this 7th day of June, 1921.

(Signed)

R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 133 to 143 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3541, wherein The United States of America is appellant, and W. W. Green and others are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 132, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein The United States of America is appellant, and W. W. Green, E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix, John L. Hargrove, Franklin Oil & Fuel Co., Humphrey Oil Co., Pure Oil Operating Co., and Standard Oil Co. of La., are appellees, No. 3541 of the Docket of said Circuit Court of Appeals to show cause, if any there be, why the Decree rendered against the said E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company and the Standard Oil Company of Louisiana, as in said petition and order for appeal mentioned, should not be cor-

rected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

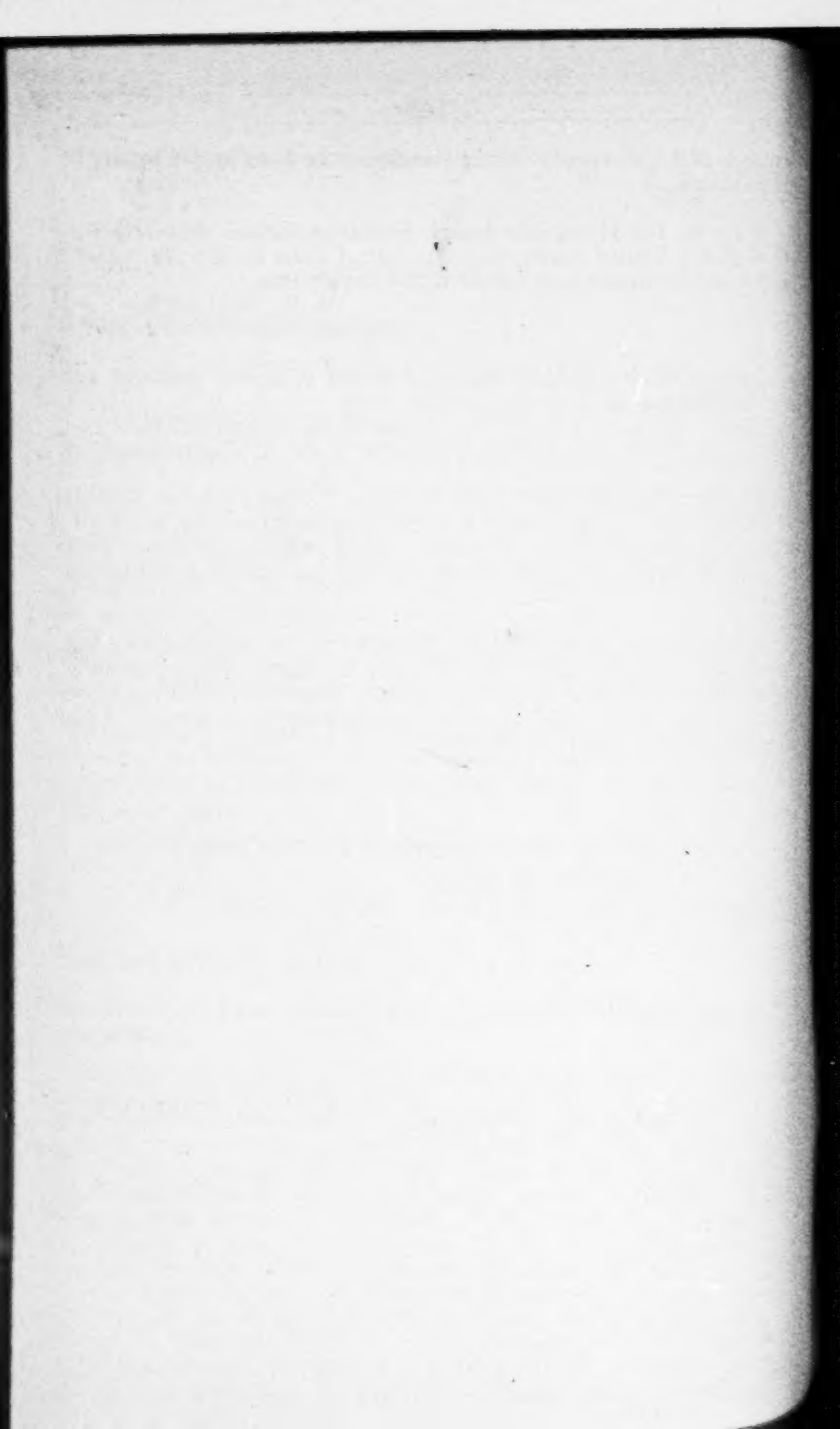
R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

[Endorsed:] No. 3541. United States Circuit Court of Appeals, Fifth Circuit. The United States of America, Appellant, vs. W. W. Green et als, Appellees. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,348. U. S. Circuit Court Appeals, 5th Circuit. Term No. 393. E. G. Palmer, Mrs. Fannie B. Heilperin, Tutrix of Natalie Heilperin, Pure Oil Operating Company, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,348.



(28,349)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 394.

ARKANSAS NATURAL GAS COMPANY, SAM W. MASON,
MRS. LYDIA HANSZEN MACMULLEN, ET AL., APPEL-
LANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY, SAM W. MASON, Mrs. LYDIA HANSZEN McMULLEN, J. A. McMullen, and Harry S. Grayson, Appellees.

Be it remembered, That heretofore, to-wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3543, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus

No. 1159 In Equity.

ARKANSAS NATURAL GAS COMPANY, ET AL.

TRANSCRIPT OF APPEAL.

Taken by the Plaintiff to the United States Circuit Court
of Appeals, New Orleans, Louisiana.

1 IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF LOUISIANA, SHREVEPORT DIVI-
SION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 1159 In Equity.

ARKANSAS NATURAL GAS COMPANY, SAM W.
MASON, MRS. LYDIA HANSZEN McMULLEN,
J. A. McMULLEN, HARRY S. GRAYSON,
Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert
A. Hunter, Special Assistant to the Attorney General,
acting herein under the direction and by the authority
of the Attorney General of the United States, brings this
bill of complaint against the following defendants:

Arkansas Natural Gas Company, a corporation organized under the laws of the State of Delaware and having an office and place of business in the City of Shreveport, in the Western District of Louisiana, with J. A. Thigpen, a resident of the City of Shreveport, Louisiana, as its agent for the service of process;

Sam W. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Mrs. Lydia Hanszen McMullen, a citizen of the State of Nevada, and a resident of Carson City, said State;

J. A. McMullen, husband of said Lydia Hanszen McMullen, a non-resident of the State, whose residence is unknown to plaintiff; and

Harry S. Grayson, a citizen of the State of Pennsylvania and a resident of the City of Pittsburg, in the Western District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land known and described as the SE $\frac{1}{4}$ of the SE $\frac{1}{2}$ of Section 28, Township 22 North, Range 15 West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, and that on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

2 On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry

of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well, and did withdraw therefrom large quantities of gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 13, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the gas so withdrawn from the said tract of land, as above set forth, was extracted under the color of a pretended mineral location made by Lydia Hanszen, now Mrs. Lydia Hans-

zen McMullen, and Sam W. Mason, who were pretending to act under the placer mining laws of the United States, which said location was recorded May 11th, 1910, in Book 59, page 439, of the conveyance records of the Parish of Caddo, Louisiana. That said pretended mineral location embraced Forty (40) acres of land, including the land herein involved, and is in words and figures as follows:

16869

Bk. 59—P. 439.
S. W. Mason, et al.
to
The Public.

Filed and recorded May 11, 1910, A.S. Hardin, Dy. Clk.
& Ex. Off. Recorder.

Location.

To whom it may concern:

Notice is hereby given that the undersigned citizens of the United States over the age of 21 years, having complied with the requirements of Chapter VI, Title 32 of the Revised Statutes of the United States and the local laws, rules and regulations, and under the authority of the Act of Congress of February 11, 1897, relating to the location of lands containing petroleum oil and other mineral oils under placer mining laws, the undersigned have located and have taken possession of 40 acres of land described as follows, to-wit:

3 South East $\frac{1}{4}$ of South East $\frac{1}{4}$ of Section 28, Township 22, Range 15, Caddo Parish, La., and have caused a copy of this notice to be posted at each of the four corners thereof.

Witness our hands this 9th day of May, 1910.

(Signed) **SAM W. MASON,**

L. HANSZEN,

By **SAM W. MASON,** Agt. and Atty-
in fact.

Attest:

L. K. MCGUFFIN,

J. M. HALE.

That said above pretended locators made no effort to explore said land or drill for gas therein, but on May 23, 1910, by act recorded in Conveyance Book 59, page 539, executed a mineral lease thereon to Harry S. Grayson, who on October 31, 1910, by act recorded in Conveyance Book 59, page 87, assigned unto the Arkansas Natural Gas Company, defendant herein, all the gas and gas rights acquired by the said Harry S. Grayson, under the lease hereinabove referred to.

Plaintiff avers that the said Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, and Harry S. Grayson have no right, title or interest in and to the said tract of land, but, acting under the said pretended and illegal mineral location, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled a well thereon as aforesaid, and took therefrom a large quantity of gas, which the defendant, Arkansas Natural Gas Company, has marketed and sold; that the said Arkansas Natural Gas Company received the price of the gas so produced, marketed and sold, and paid a royalty therefrom to the other defendants herein, the amount of which is to the plaintiff unknown. The exact quantity of gas so produced, withdrawn from the land, and sold, and the value thereof, being unknown to the

plaintiff, full discovery from the defendants herein is sought.

Plaintiff states that the said well was drilled by the Arkansas Natural Gas Company, defendant herein, after the second withdrawal order above referred to.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the gas taken therefrom exceeds the sum of Five Thousand (\$5,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location made by the said Lydia Hanszen and Sam W. Mason, and the aforesaid lease made by them to Harry S. Grayson, as well as the transfer thereof by the said Harry S. Grayson to the Arkansas Natural Gas Company, as hereinabove set forth, be declared null and void and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting gas, with full power and authority to continue operations on said land in the production and sale of oil, gas

and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of Subpoena issue directed to the Arkansas Natural Gas Company and Sam W. Mason, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

9. And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: Mrs. Lydia Hanszen McMullen and Harry S. Grayson, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

10. And may it further please the Court that an order be granted and entered directed to J. A. McMullen, defendant herein, directing said defendant to appear and answer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

5

AFFIDAVIT.

United States of America,
Northern District of California,

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location, and all forms of appropriation by orders of December 15, 1908, and July 2, 1910, and that from the examination of such lands, and from examination of the records of the General Land Office and of the local land office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

LYLE S. MOURS,
Deputy Clerk United States District Court, Northern District of California.

6

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen and Harry S. Grayson, are not inhabitants of the Western District of Louisiana and are domiciled outside of said district,

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 10th day of September, 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this Order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for a period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that copies of this Order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 20 day of July, 1917.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Bill of Complaint. Filed Jul. 21, 1917.

7 In the District Court of the United States for the
Western District of Louisiana, Shreveport
Division.

United States of America, Plaintiff,

vs. No. 1159 In Equity.

Arkansas Natural Gas Company, Sam W. Mason, Mrs.
Lydia Hanszen MacMullen, J. A. MacMullen, Harry
S. Grayson, Defendants.

The defendants, Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, divorced wife of J. A. MacMullen, and Harry S. Grayson, answer the bill of complaint herein brought against them as follows:

I.

Respondents admit that on and before December 15th, 1908, the plaintiff was the owner, as a part of its public domain, of the tract of land described in this article of the bill of complaint, and that on and prior to the aforesaid date plaintiff was the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

Defendants admit that on December 15th, 1908, the President of the United States, through the Commissioner of the General Land Office, withdrew from settlement and entry all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana meridian, which withdrawal, included the lands herein involved. But defendants deny that the said withdrawal was intended to withdraw or had the effect of withdrawing from location and purchase under the mining laws of the United States, any of the land within the said area.

Defendants admit that on the 2nd day of July, 1910, the President of the United States, acting under the act of June 25th, 1910, referred to in the second article of the bill of complaint, again issued a withdrawal order, and in said order ratified and confirmed, and
8 continued in full force and effect, the previous order of withdrawal of December 15th, 1908; but defendants show that the previous withdrawal of December 15th, 1908, did not and was not intended to affect the right to locate and purchase under the mining laws of the United States any public lands within the withdrawn area.

Defendants admit that neither of said orders of withdrawal has ever been vacated, but defendants say that prior to July 2nd, 1910, at which time lands within Petroleum Reserve No. Four were withdrawn from mineral location, the land in controversy was subject to location and purchase under the mining laws of the United States and to the right of any citizen to prospect upon the same for mineral, including oil and gas.

III.

Defendants deny that in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful rights or authority, they entered upon and took possession of the said tract of land, for the purpose of drilling thereon for oil and gas, or that they entered upon and drilled thereon for oil and gas in bad faith. Defendants admit, however, that they did enter upon said land, under and by virtue of the mining laws of the United States, under a valid location thereof, and did discover thereon minerals in paying quantities, to-wit, natural gas, which location and which discovery were made under and by virtue of the mining laws of the United States and in good faith.

IV.

Defendants admit that on and prior to December 15th, 1908, none of them were in possession of said land, but defendants show that prior to July 2nd, 1910, they were bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of gas, which discovery was in fact made on the 25th day of August, 1910, thereby vesting in the locators the rights granted by the mining laws of the United States to locators of placer mining claims. And defendants show that being in possession of said property on July 2nd, 1910, in
9 diligent prosecution of work leading to a discovery of gas, their rights as locators are protected by the laws of the United States, although the order of withdrawal of July 8nd, 1910, in fact, intervened.

V.

Defendants admit the mineral location made by Lydia Hanszen and Sam W. Mason, under the mining laws of

the United States, which said location was recorded May 11th, 1910, in Book 59, page 439, of the conveyance records of the Parish of Caddo, Louisiana, said location embracing the land herein involved, and which notice, in words and figures as set out in the bill, was duly posted on said land, in addition to the recordation as aforesaid.

Defendants show that said locators took possession of the said property under the said location, as was their right under the laws of the United States, and on May 23rd, 1910, leased the said property to Harry S. Grayson, who on October 31st, 1910, after the discovery of gas on said property in paying quantities in the well drilled by him under said lease from the said locators, assigned to the Arkansas Natural Gas Company all of the gas and gas rights by him, the said Grayson, acquired under the laws above referred to.

Defendants deny that they have no right, title or interest in and to the said tract of land, or that the said mineral location was illegal; but they say that under and by virtue of the said location and the said lease, they entered upon the said tract of land and drilled a well thereon which produced gas in paying quantities. Defendants deny, however, that any large quantity of gas from the said well was ever marketed or sold, and say that the amount of gas marketed and sold from said well was very small—the value of gas so marketed and sold being much less than the cost of drilling the said well, which was drilled by the said Grayson in good faith under the said laws. Defendants reserve the right by an amended answer to file a full account of the amount and value of the gas sold and marketed and the cost of producing the same, and of setting up all of their rights to compensation by virtue of having drilled the said well.

Defendants further show that although the said well was completed after the second withdrawal order above referred to, that operations therefor were begun before, and were being diligently prosecuted prior to and at the date of, the said withdrawal order, and that their rights by reason of such diligent prosecution of work were fully saved by the acts of Congress.

VI.

Defendants deny that they are or ever have been unlawful trespassers upon the said land, but they show that their possession of same was lawful and under and by virtue of the laws of the United States; that under their said location they are the equitable owners of the said property and entitled to use the same as they see fit; but they deny any present intention of drilling any further wells upon the said lands.

VII.

Defendants deny that they acted in bad faith, but specially aver their good faith and their legal rights as aforesaid.

Wherefore, having made full and complete answer to all the allegations of the bill of complaint, defendants pray that the said bill be dismissed and that they be hence discharged with all costs in their behalf sustained.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—Answer. Filed Aug. 10, 1917.

11 (INTERROGATORIES TO BE PROPOUNDED
TO ARKANSAS NATURAL GAS CO).

(1).

State who drilled the well known as Hanszen No. 1 on the land in controversy in this case.

(2).

State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3).

Did said well produce gas, and was said gas or the proceeds of the sale thereof converted to the use and benefit of the defendants in this cause?

(4).

During what period was said well operated in the production of gas, and when, if at all, did it cease to produce gas?

(5).

State whether or not the said gas well was operated in the production of gas as an entity, or in connection with other wells on the same or different tracts of land?

(6).

Was a separate and complete record kept by the Arkansas Natural Gas Company of the gas produced by said well? If so, state how and in what manner said record was kept?

(7).

State the initial production of gas from said well.

(8).

If the production, as given by you in your answers to the preceding interrogatories, is based upon an estimate of the quantity of gas produced by said well, then state the manner in which you arrived at, or estimated the production of said well.

(9).

State the total market value of the gas produced by the Arkansas Natural Gas Company from the land in controversy, and say whether or not the value as given by you is exact or approximate, and, furthermore, state upon what the value as given is based.

(10).

State whether or not the Arkansas Natural Gas Company was engaged at the time said well was drilled and operated in the distribution and sale as well as
12 as in the production of gas, and also state whether the gas produced from said well was sold by said Company to other persons or corporations, and if not sold, then state how said gas was used, and what disposition was made thereof.

(11).

State the total profits made by the Arkansas Natural Gas Company from the sale or use of the gas produced by said well.

(12).

State how much money was paid as royalties by the Arkansas Natural Gas Company to the other defendants herein, out of the proceeds of the sale of gas taken from the land in controversy in this cause, giving the names of each of said defendants to whom the royalty or royalties were paid.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Application and Order to File Interrogatories and Interrogatories to be Answered by the Arkansas Natural Gas Company. Filed Feb. 20, 1918.

13 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port, Louisiana.

United States of America, Plaintiff,

vs. No. 1159 In Equity.

Arkansas Natural Gas Company, Sam W. Mason, Mrs.
Lydia Hanszen MacMullen, J. A. MacMullen, Defend-
ants.

In the above entitled and numbered suit, comes now the Arkansas Natural Gas Company, through J. R. Munce, its second vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Well known as Hanszen No. 1 was drilled by the Woolf Drilling Company.

To Interrogatory No. 2, defendant answers:

Said well was commenced on July 16th, 1910, and was completed August 25th, 1910, but was not operated until December 24th of said year; the said well being operated from December 24th, 1910, until September 30th, 1912, by defendant. Defendant, however, continued to pay the gas rental of Two Hundred Dollars per year, provided by the lease from the original locators, until 1916; these payments being made after defendant ceased taking gas from this well in order to keep the lease in force for the reason that if drilling on adjacent territory seemed to justify it, the Company might drill to a deeper depth than for a gas well and the land be found to be oil bearing. But in 1916 the Company decided to abandon the lease entirely and since that date no rentals have been paid.

To Interrogatory No. 3, defendant answers:

The gas produced from said well was used for the benefit of defendant, defendant paying an annual rental of Two Hundred Dollars for said gas well to the said Sam W. Mason and Mrs. L. H. MacMullen, as provided by the original lease from the locators to Harry S. Grayson, assignor to defendant.

14 To Interrogatory No. 4, defendant answers:

Said well was operated in the production of gas from December 24th, 1910, to September 30th, 1912, but no material benefits were derived from said well by said defendant until July 2nd, 1911, when said well was turned into the line of said defendant; the line of the said de-

fendant to Little Rock, Arkansas, being in the course of construction at that time and not completed until June, 1911, when gas was furnished the city of Little Rock for domestic purposes by defendant. Said well was of no benefit whatever to defendant after the rock pressure of the well was below the line pressure in the defendant's pipe lines, which condition occurred September 30th, 1912, at which time defendant ceased to use the gas from said well.

To Interrogatory No. 5, defendant answers:

This well was operated in connection with four other wells owned by defendant, and the gas from said five wells was run with the gas purchased by defendants from other wells, not owned by the defendant, into the line of the defendant.

To Interrogatory No. 6, defendant answers:

A separate and complete record was not kept of the production from this well. During the period gas from this well in connection with the gas from the other four wells owned by the company, above referred to, was run into the line of the company, with the gas purchased from other wells not owned by the company, we sold from all of said wells, 3,855,164,000 cubic feet of gas. The amount of gas purchased from the wells not owned by the company was 2,240,990,000, which would show the production of the five wells owned by the company to be 1,614,174,000 cubic feet, or approximately 322,834,800 cubic feet, each.

To Interrogatory No. 7, defendant answers:

The initial production of said well was forty million cubic feet of gas per day, but in less than one year's time it had decreased to seven and a half million cubic feet per day; rock pressure had dropped from 385 pounds down

to 84 pounds and subsequent to September 30th, 1912, gas from this well could no longer be run into the line of the company.

15 To Interrogatory No. 8, defendant answers:

The production of said well is estimated to be approximately one-fifth of the total production of the five wells owned by the company aforesaid; and since the records of the company show that 3,855,164,000 cubic feet of gas was sold by it during the period that gas was taken by the company from these five wells, and that it purchased 2,240,990,000 cubic feet of gas during that period from wells not owned by it, but run into the line of the company with the gas from the said five wells that were owned by it, the production of said five wells was the difference between 3,855,164,000 and 2,240,990,000 or 1,614,174,000 cubic feet of gas. Assuming that these five wells owned by the company produced in equal volume, the estimated production of the well in controversy would be $\frac{1}{5}$ of 1,614,174,000, or 322,834,800 cubic feet.

To Interrogatory No. 9, defendant answers:

The total market value of the gas produced by defendant from the well in controversy was Four Thousand Eight Hundred and Forty-two and $\frac{52}{100}$ (\$4,842.52) Dollars. The value as given is approximate to this extent, it is based on the estimated production of said well, 322,834,800 cubic feet, at one and one-half ($1\frac{1}{2}$) cents per thousand cubic feet, the price paid by defendant for the gas purchased by it during the same period.

To Interrogatory No. 10, defendant answers:

Defendant was engaged in the distribution of gas for drilling purposes in the Caddo field at the time of the completion of this well, and later furnished gas for domestic use in Arkansas.

To Interrogatory No. 11, defendant answers:

The cost of drilling and equipping said well was	\$5,200.95;
Cost of operating said well during the period that gas was used therefrom	140.00
Gas rentals paid to locators for two years...	400.00
	<hr/>
	\$5,740.95
Less receipts from the sale of 322,834,800 cubic feet of gas at 1½c. per thousand cubic feet	4,842.52
	<hr/>
Or a Loss of	\$ 898.43

16 As aforesaid, defendant continued to pay gas rental to the locators even after it discontinued the use of gas from this well, but there is only charged to this well in arriving at the loss of \$898.43 aforesaid, the gas rental paid during the period gas was taken from the well by defendant.

In addition to the above, defendant laid a two mile pipe line from this well to its main line to take care of the production of this well and three other wells, at a cost of \$3,168.00 for the laying of the line, and \$2.13½ per foot for the pipe used in the line, or \$11,895.60, or a total of \$15,153.60, which line would not have been laid but for the drilling of this well. Considering the expense of building this line there was a very large actual loss to defendant in its effort to operate this lease.

There is still some salvage in the well as the casing has never been removed.

To Interrogatory No. 12, defendant answers:

No money was paid out of the proceeds of the sale of gas taken from the land in controversy in this cause; the

only sums paid by the Company being the rental of Two Hundred Dollars per year paid to the said Sam W. Mason and Mrs. L. H. MacMullen, locators, under the terms of their lease to the said Harry S. Grayson, for seven years, or Fourteen Hundred (\$1,400.00) Dollars; rentals for the additional five years after the Company ceased to use gas from the well being paid in order to preserve this lease, said \$1,000.00 not being properly chargeable to this well.

J. R. MUNCE.

Sworn to and subscribed before me on this the 14 day of May, 1918.

J. A. THIGPEN,
Notary Public in and for
Caddo Parish, Louisiana.

Indorsed:—Answer of Arkansas Natural Gas Company to Interrogatories. Filed May 14, 1918.

17 United States District Court, Western District
of Louisiana.

United States,

vs.

No. 1159.

Arkansas Natural Gas Company, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of this cause, the Court of its own motion appoints Edward E. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

18 STATEMENT OF GAS RUN BY COMPANY.

Suit No. 1159—Plff I
R. B. Cook, Stenographer.

Arkansas Natural Gas Co.

From July 1st, 1911	
to September 30th,	
1912	4,744,838,000 Cu. Ft. 8 Oz. base.
Purchased by Com-	
pany from other	
concerns and run	
into this line	2,395,993,000 Cu. Ft. 10 Lb. base.
Total produced by	
Arkansas Natural	
Gas Company's	
five wells	2,348,845,000 Cu. Ft.
1/5 or total produced	
by well in suit . . .	469,769,000 Cu. Ft.

Value at 1½c. per 1000 cubic feet	\$7,046.54	On 8 Oz. base.
Cost of Drilling	4,842.12	
	<hr/>	
	\$2,204.42	
Paid to royalty	1,400.00	
	<hr/>	
	\$ 804.42	

Division of Royalty or Rental.

May 1910 to May 1916.

Warren H. Matthews 1/8	\$175.00
Mrs. Lydia Hanszen McMullen ½ of remainder	612.50
Dillard P. Eubanks ½ of remainder	306.25
Sam W. Mason, remainder	306.25
Net amount retained by The Arkansas Natural Gas Co. after deducting rental or royalty	804.42
	<hr/>
Total	\$2204.42

First work done on lease leading to discovery of mineral July 16, 1910.

Filed Jan. 21, 1919

19 Arkansas Natural Gas Company.

Cost of Hanszen Mason Well.

Our Serial No. 12.

Labor, teaming and freight	\$ 168.08
Drilling	2,796.00
Rigs	387.52
Other Equipment	136.77
Casing and tubing	1,353.75
Total	<u>\$4,842.12</u>

20 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1159 In Equity.

Arkansas Natural Gas Co., et al., Defendants.

Now come Sam W. Mason, and Mrs. Lydia H. McMullen, two of the defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has stated and certified that these defendants received royalty from the gas well in controversy; whereas he should have reported and certified that

they received no royalties whatever from the property, but merely a rental from the co-defendant, the Arkansas Natural Gas Company.

2.

That the Master has stated and certified that these defendants should be held liable to the Government for the sums received by them as rentals from the property on the gas well in controversy; whereas he should have reported and certified that the Government had no interest in sums received by them as rental and that they were not so liable.

Wherefore, they pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,

Solicitors for Defendants, Sam W.
Mason and Mrs. Lydia H. MacMullen.

Indorsed:—Exception of Sam W. Mason, and Mrs. Lydia H. MacMullen to the Report of the Special Master. Filed Jan. 30, 1919.

21 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1159 In Equity.

Arkansas Natural Gas Co., et al., Defendants.

Now comes the Arkansas Natural Gas Company, one of the defendants herein, and excepts to the report of E.

H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That in said report the Master has stated and certified that judgment should be rendered against this defendant in the sum of \$1,285.67; whereas he should have reported and certified that no money judgment should be rendered against this defendant.

2.

That the Master in said report stated and certified that judgment should be rendered against this defendant in the sum of \$1,285.67; whereas he should have reported that if any money judgment should be rendered against this defendant the same could not, under his own calculations, exceed \$804.42.

3.

That the Master reported and certified that this defendant should be held liable further in solido with its co-defendants for the amount of rentals paid to them; whereas he should have reported and certified that this defendant could not be held liable for any rentals paid out by it.

4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) per cent per annum from the filing of the report; whereas

THIGPEN & HEROLD,
Solicitors for Defendant, Arkansas
Natural Gas Company.

23 In the District Court of the United States for
the Western District of Louisiana.

United States of America,
vs. No. 1159.
Arkansas Natural Gas Company, et al.

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Sec-

retary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F 1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T," which said exhibits were by agreement of counsel (record 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 22 North, Range 15 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit. and was so recognized by the Master in his report.

24 2. The mineral location in this cause embraced the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, of Sec. 28, Township 22 N., R. 15, West, and was made May 9, 1910 (see paragraphs 4 and 5 of answer of defendants of bill of complaint). The evidence shows that no work whatever leading to a discovery was begun upon said land until July 16, 1910, the said well having been commenced on that date, but was not operated until December 24, 1910 (see answer of Arkansas Natural Gas Co., to Interrogatory No. 1).

Plaintiff avers that the drilling of said well and the removal of gas from said land were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said

withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That no counterclaim or set-off was asserted, contained or set forth in the answer of defendants to the bill of complaint, nor by any pleading subsequently filed. Plaintiff states that in paragraph 5 of the answer the defendants reserved the right by an amended answer to set up claims for compensation by virtue of having drilled the said well, but that no such amended answer was ever filed. Plaintiff alleges that the Master erred in allowing the counterclaim when none had been filed, and that under equity rules 30 and 31, no set-off or counterclaim can be allowed unless specially pleaded. Plaintiff further states that said counterclaim could not properly be filed or asserted in this cause, because, under the admissions made by defendant, Arkansas Natural Gas Company (in whose favor the Master allowed the counterclaim), to the interrogatories as above set forth, no work whatever was done upon the land embraced in the mineral location until after the withdrawal of July 2, 1910.

25 5. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove or attempt to prove that they extracted and removed the gas from plaintiff's land through mistake or inadvertance, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence raises a presumption

that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a) Against the Arkansas Natural Gas Co.
for the Total value of the gas produced from
said land, less royalties of \$918.75, paid to Mrs.
Lydia Hanszen McMullen and Sam W. Mason,
all as shown by the Master's report, amount-
ing to the sum of \$6,127.79

(b) Against the Arkansas Natural Gas Co.
Mrs. Lydia Hanszen McMullen and Sam W.
Mason, in solido, for the amount of royalties
paid by the Arkansas Natural Gas Co. to de-
fendants, McMullen and Mason, all as shown
by the Master's report, aggregating the sum
of 918.75

Said sums aggregating \$7,046.54, being total value of
gas extracted and removed from said land by defendants,
as shown by the Master's report.

Plaintiff prays that in all other respects the said re-
port and recommendations of the Master be con-
firmed and made the decree of this Honorable
Court. Prays for all orders and decrees neces-
sary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to The Attorney
General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

27 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1159 In Equity.

Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, Harry S. Grayson.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Southeast Quarter ($SE\frac{1}{4}$) of Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty-eight (28), Township Twenty-two (22) North, Range Fifteen (15) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the mineral location made by Lydia Hanszen (now Mrs. Lydia Hanszen McMullen) and Sam W. Mason, May 9, 1910, recorded May 11, 1910, in book 59, page 439; the lease of said land made by said locators May 23, 1910, to Harry S. Grayson, by act recorded in Conveyance Book 59, page 87, of the Conveyance records of Caddo Parish, Louisiana, and the assignment of said lease to the Arkansas Natural Gas Company, insofar as the said mineral location and lease may include, directly or indirectly, the above described property, be and the same are declared null, void, and held for naught, and the said mineral location and lease are annulled and shall be cancelled.

28 IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, and Harry S. Grayson, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of and from the Arkansas Natural Gas Company and the said defendant is hereby condemned and order to pay to plaintiff, the full sum of One Thousand, Two Hundred and Eighty-five and 67/100 (\$1,285.67) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Arkansas Natural Gas Company, Sam W. Mason and Mrs. Lydia Hanszen McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Nine Hundred and Eighteen and 75/100 (\$918.75) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the rights of the United States of America, if any, to recover royalties paid to W. H. Matthews and Dillard P. Eubank, be reserved, in accordance with recommendation set forth in the Master's report.

IX. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells, and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in

the sum of Five Hundred (\$500.00) Dollars,
 30 which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such

account from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Decree. Filed August 12, 1919.

31 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

vs. No. 1159, In Equity.

Arkansas Natural Gas Company, et al.

To the Honorable, the Judge of the District Court of the
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States
of America, plaintiff in the above numbered and entitled
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,

United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S AP-
PEAL.

In the District Court of the United States for the West-
ern District of Louisiana.

United States of America,
vs. No. 1159 In Equity.
Arkansas Natural Gas Company, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing to the Arkansas Natural Gas Company, as an offset or credit, the costs and expenses of producing gas from the well situated on the land in controversy, and in not entering a decree in favor of plaintiff for the total value of the said gas.

II.

The Court erred in allowing to said defendant the costs of production of said gas, and in not entering a decree in favor of plaintiff for the full value of the gas extracted and removed from the land in suit, because the
33 said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pend-

ing and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the gas in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said gas.

IV.

The Court erred in allowing said offset or credit for the reason that no counterclaim or offset was asserted in the answer or other pleadings filed herein by defendants.

V.

The Court further erred, in any event, in finding and holding that the said defendants were entitled to deduct from the value of the gas extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset or credit.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or credit for the cost of drilling, equipping, and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the gas extracted and removed from said land, as shown by the report of

the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said gas, without offset or deduction of any kind.

34 Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or credit herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Appeal, Order Allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

35 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1159.

Arkansas Natural Gas Company, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1168, 1170 1171, were consolidated in the District Court for trial with the case entitled United States v. Sam W. Mason, et al, No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit;

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the
 36 land in dispute and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendants on the date as alleged in the bill of complaint, and that at the time

said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Answer of defendants.
3. Interrogatories propounded to Arkansas Natural Gas Company.
4. Answer of Arkansas Natural Gas Co. to interrogatories.
5. Order appointing E. H. Randolph Special Master in Chancery.
6. Statement prepared and identified by James W. Neal, Special Agent of the General Land Office, showing quantity and value of oil produced and cost of drilling well, together with all other information given in said statement, marked plaintiff's Exhibit I.
7. Exceptions of Sam W. Mason and Mrs. L. H. McMullen to Master's report.

8. Exceptions of Arkansas Natural Gas Co. to Master's report.

9. Plaintiff's exceptions to Master's report.

10. Final decree.

11. Plaintiff's petition for appeal, order allowing same, and assignment of errors.

12. This stipulation.

This done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

37

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing thirty-six pages contain and form a full, true, correct and complete transcript of the record, assignment of errors, and all proceedings had in a cause where The United States of America, is plaintiff, and Arkansas Natural Gas Company, et al., are defendants, No. 1159 In Equity on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana,—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk U. S. District Court,
for the Western District of Louisiana.

— — —

Citation omitted from the Printed Record, being filed in the Original.

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And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3543.

THE UNITED STATES OF AMERICA

versus

ARKANSAS NATURAL GAS CO. et als.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., for appellant, and S. L. Herold, Esq., for appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western
District of Louisiana.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of *Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit*, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3543.

THE UNITED STATES OF AMERICA

versus

ARKANSAS NATURAL GAS CO. et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellees, Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, and Harry S. Grayson, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

Solicitors for said Appellants.

Order.

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Ten Thousand Four Hundred Dollars (\$10,400.00).

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

And now come all of said appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the gas extracted therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the gas extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the gas extracted from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in extracting such gas.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in extracting the gas, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in extracting the gas according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of gas, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Arkansas Natural Gas Company, the amount paid by it to its co-defendants as royalty or rental.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY, SAM W. MASON, MRS. LYDIA HANSZEN MACMULLEN, J. A. MacMullen and Harry S. Grayson, Appellees.

Know all men by these presents, That we, the Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen and Harry S. Grayson, as principals, and the United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of Ten Thousand Four Hundred (\$10,400.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, La., on this the 30 day of May 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellant and the Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen and Harry S. Grayson were appellees, numbered on the Equity Docket 3543, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit; and the said Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, and Harry S. Grayson have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, and Harry S. Grayson shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) ARKANSAS NATURAL GAS COMPANY,
By S. L. HEROLD,
Attorney.

(Signed) SAM W. MASON,
By S. L. HEROLD,
Attorney.

(Signed) MRS. LYDIA HANSZEN MACMULLEN,
By S. L. HEROLD,
Attorney.

(Signed) J. A. MACMULLEN,
By S. L. HEROLD,
Attorney.

(Signed) HARRY S. GRAYSON,
By S. L. HEROLD,
Attorney.

(Signed) UNITED STATES FIDELITY &
GUARANTY CO.,
By L. L. BEBOUT,

[SEAL.] *Attorney in Fact.*

Approved this 7th day of June 1921.

(Signed)

R. W. WALKER,
U. S. Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 47 to 55 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3543, wherein The United States of America is appellant, and Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, and Harry S. Grayson are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 46, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the United States of America is appellant and the Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen and Harry S. Grayson are appellees, No. 3543 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Arkansas Natural Gas Company and others as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

[Endorsed:] No. 3543. United States Circuit Court of Appeals, Fifth Circuit. United States of America, Appellant, vs. Arkansas Natural Gas Co. et al., Appellees. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,349. U. S. Circuit Court Appeals, 5th Circuit. Term No. 394. Arkansas Natural Gas Company, Sam W. Mason, Mrs. Lydia Hanszen MacMullen, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,349.

(4268.)



(28,350)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 395.

B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER,
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER, C. M. SMILKER, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company, of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, towit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3544, as follows:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

Plaintiff,

versus

No. 1167 In Equity.

B. R. NORVELL, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants and Cross Appeal taken by the Plaintiff, to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana.

1 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal and Gulf Refining Company of Louisiana, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General,

acting herein under the direction and by the authority of the Attorney General of the United States, bring this bill of complaint against the following defendants: B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, all citizens of the State of Texas, and residents of the City of Beaumont, in the Eastern District of said State; A. Wildenthal, a citizen of the State of Texas, and a resident of the City of Carrizo Springs, in the Eastern District of said State; and the Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, domiciled in the City of New Orleans, in the Eastern District of said State; and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the following described lands, to-wit, the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section Thirty-one (31), Township Twenty (20) North, Range Fifteen (15) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing One hundred and sixty (160) acres, were surveyed public lands and constituted a part of the public domain of the United States; and, as such, the plaintiff was on that date, and still 2 is, the owner and entitled to the possession thereof and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary

of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands as withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title,

3 lawful right or authority, the defendants herein,
in bad faith, entered upon and took possession of
the tract particularly described in paragraph I
hereof, for the purpose of drilling thereon for oil and gas,
and did so drill two wells known as Norvell Nos. One and
Two, and did withdraw therefrom large quantities of oil
gas the exact amount and value of which is unknown, all to
the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders
hereinabove set forth, to-wit: December 15, 1908, and July
2, 1910, none of the said defendants, or any one from
whom the defendants, or any of them, claim, was in the
possession of said land, or a bona fide occupant thereof
in diligent prosecution of work thereon leading to a dis-
covery of oil or gas, and no such discovery was in fact
made prior to said orders of withdrawal, nor until long
after said orders were issued, and had become effective
to withdraw said land from location, entry and other
appropriation.

V.

Plaintiff is informed and believes that the oil and gas
withdrawn from the said tract of land, as above set forth,
were extracted therefrom under the color of an illegal
mineral location made by defendants, B. R. Norvell,
Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R.
Millard, A. S. Denman and A. Wildenthal, represented
by W. W. Bell, as their agent and attorney in fact, pre-
tending to act under the place mining laws of the United
States, which pretended location was recorded December
24, 1908, in Book 51, page 565, of the Conveyance Records
of Caddo Parish, Louisiana. That said pretended mineral

location embraced One Hundred and Sixty (160) acres of land, including the land herein involved, and is in words and figures as follows:

A. E. Weaver, et als
to
The Public.

Filed and Recorded Dec. 24, 1908.

Notice of Mining Location.

Notice is hereby given that the undersigned, all citizens of the United States, having complied with the requirements of Chapter VI of Title 32 of the R. S. of the U. S., and the local laws, rules and regulations, and under the authority of the Act of Congress of February 11, 1897, relating to the location of lands containing petroleum, oil, or other mineral oils under placer mining claims; the undersigned constituting a mining association having located 160 acres of land described as follows, lying
4 in Caddo Parish, State of Louisiana, being

W $\frac{1}{2}$ SE $\frac{1}{4}$ & S $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 31, T. 20 N. R. 15 W., La.,
containing in all 160 acres of land.

Witness our hands this 22nd day of Dec., A. D. 1908.

(Signed)

CHAS. H. STROUCK,
A. E. WEAVER, per
BLANCHARD,
C. M. SMILKER,
P. R. MILLARD,
B. R. NORVELL,
A. S. DENMAN,
A. WILDENTHAL,

By W. W. BELL, agt. and attorney of
said parties and each of them.

Attest:

L. B. WEBSTER,
L. HANSZEN.

That the said pretended mineral locators were not in good faith, but were "dummy locators," who allowed the use of their names by W. W. Bell, at the request of one, C. H. Markham, a representative of the Gulf Refining Company of Louisiana, and for its use and benefit, for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana, a mineral location of an area of land to which it was not entitled under the law.

That the said pretended locators themselves made no effort to explore said land or drill for oil or gas thereon, but that the said oil and gas were extracted from the said land by the said Gulf Refining Company of Louisiana, under the color of some pretended claim emanating from and out of the said locators, the nature of which claim is to the plaintiff unknown.

Plaintiff shows that the said defendants have no right, title or interest in and to the said tract of land, but that the said Gulf Refining Company of Louisiana, acting under said pretended claim, hereinabove set forth, and during the month of January, 1909, after the first withdrawal order above mentioned, and subsequent to the filing and recordation of said pretended location, entered upon the property in controversy in this case, drilled wells on said land, as aforesaid, and took therefrom a large quantity of oil and gas, which it, the said Gulf Refining Company of Louisiana, has marketed and sold. That the said Gulf Refining Company of Louisiana received the price of the oil and gas so produced, marketed and sold by it, and paid out of the proceeds thereof the sum of approximately five hundred (\$500.00) Dollars to each of the said

locators hereinabove named, the exact amount so paid being to plaintiff unknown.

5 The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

Plaintiff avers that the said defendants are claiming an interest in said land, and in the proceeds of the sale of oil and gas taken therefrom under said pretended mineral location hereinabove set forth, which plaintiff alleges, is null and void, First: for the reason that the said land had been withdrawn from all forms of mineral entry prior to such pretended location, and Second: for the further reason that even if said land had been open to entry, the pretended location made by "dummy locators" was for the use and benefit of a concealed party, and was a fraud on the United States.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Ten Thousand (\$10,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said mineral location recorded December 24, 1908, in Book 51, page 565, of the Record of Caddo Parish, Louisiana, and any and all claims of the said defendants emanating therefrom, as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be ad-

joined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

7 8. And may it further please the Court that an order be granted and entered, directed to the said defendants, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana,

who are not inhabitants of, and who are not now within, this District, and that the same be served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

(Seal) C. W. CALHEATT,
Deputy Clerk, U. S. District Court,
Northern District of California.

8

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana, are not inhabitants of the Western District of Louisiana and are domiciled outside of said District,

It is, therefore, ordered that the said absent defendants be, and they are hereby directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15th day of Sept. at the hour of ten o'clock A. M., and that the service of a duly certified copy of the said bill of complaint and of this order be made on said defendants wherever found.

Thus done and signed, this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 2, 1917.

9 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M.
Smilker, P. R. Millard, A. S. Denman, A. Wilden-
thal and Gulf Refining Company of Louisiana, De-
fendants.

The joint and several answer of all the defendants in
the above entitled and numbered cause.

And now come all of said defendants and answer the
bill of complaint as follows:

I.

The ownership by the United States, on and before De-
cember 15th, 1908, of the South Half of the Northeast
Quarter and the West Half of the Southeast Quarter of
Section Thirty-one (31), township and range referred to,
is admitted; but it is denied that plaintiff is now the
owner thereof or entitled to the possession of said land or
of the minerals therein contained.

II.

It is denied that the presidential withdrawal of De-
cember 15th, 1908, affected the right of any duly quali-
fied citizen to locate said property under the mining laws
of the United States or that such order pretended to oper-
ate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd,
1910, (issued under authority of the act of Congress ap-

proved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location
 10 of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal has ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the wells referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority on in bad faith or to the injury of plaintiff.

IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the with-

drawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to, in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

V.

It is specially denied that the mineral location referred to was illegal or a pretended one. On the contrary, defendants show that the said location was a legal and valid one, made in good faith, under the placer mining laws of the United States, upon public lands of the United States at that time open to exploration, location and purchase under such mining laws.

And defendants, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal, specially deny the allegations that they did not locate in good faith and that they were "dummy locators", who allowed the use of their names, at the request of a representative of the Gulf Refining Company of Louisiana, and for its use and benefit, or that such proceedings were had for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana a mineral location of an area of land to which it was not entitled under the law. But said defendants aver that said location was made in good faith and for their own use and benefit.

Said defendants admit that they did not by their own labor or at their own direct expense, drill on said land; but show that, as they had the right to do, they leased said property to the Gulf Refining Company of Louisiana

on the 24th day of December, 1908, as fully appears from said act of lease, which will be produced on trial hereof: and all of your defendants now show that, under and pursuant to the terms of said lease, lawfully made and entered into, said lessee proceeded in good faith to drill upon said location, commencing such drilling on the 26th day of December, 1908, and completed such effort with the discovery of oil in paying quantities on the 25th day of March, 1909, by the bringing in on said date of an oil well, thereby completing such location by a bona fide discovery.

Defendants, therefore, deny that they secured by said location no right, title or interest in and to said tract of land, and they admit that, as a result of its operations under said lease the Gulf Refining Company of Louisiana extracted and withdrew from said land seventeen thousand nine hundred and seventy-two & 76/100 (17,972.76) barrels of oil, of the market value of Thirteen Thousand Two Hundred and Sixty-one & 31/100 (\$13,261.31) Dol-

12 lars, which said lessee disposed of by the delivery to the mineral locators, or their proportion as royalty, and by the sale of the remainder at the market price, for its own account.

Defendants admit that they are claiming said land, which is, by virtue of such discovery and location, and subsequent legal assessment work, the property of said locators above named, subject to the valid mineral lease to the Gulf Refining Company of Louisiana as above set out. And they deny that said location is null and void, or that said land was withdrawn from mineral location prior to their location aforesaid or prior to discovery thereunder, or that the location was a "dummy" one or made for the use and benefit of a concealed party or that it was a fraud on the United States.

VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locators, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, seventeen thousand nine hundred and seventy-two & 76/100 (17,972.76) barrels of oil of the market value of Thirteen Thousand Two Hundred and Sixty-one & 31/100 (\$13,261.31) Dollars; of which, six thousand and fifty-one & 83/100 (6,051.83) barrels of oil of the market value of Three Thousand Five Hundred and Fifty-four & 62/100 (\$3,554.62) Dollars was delivered as royalty to the defendants, mineral locators; and the remainder, to-wit, eleven thousand nine hundred and twenty & 93/100 (11,920.93) barrels of oil of the par value of Nine Thousand Seven Hun-

dred and Six & 69/100 (\$9,706.69) Dollars, was retained by said lessee for its own use as owner—all of which it had the right to do.

IX.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond the executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location aforesaid was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights

and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

14

X.

Defendants show that the location aforesaid was made in good faith, for the use and benefit of the said mineral locators, and not for the Gulf Refining Company of Louisiana.

But if the Court should hold that the location was made for said company, then defendants would show that said Gulf Refining Company of Louisiana is a corporation organized and chartered under the laws of the State of Louisiana and composed of more than eight persons, stockholders of said corporation, and all citizens of the United States, duly qualified to locate lands under the placer mining laws of the United States; and that said Gulf Refining Company of Louisiana, accordingly, is, under said mining laws, an association of more than eight persons and competent as such association to locate one hundred and sixty acres of land in one mineral location, and, accordingly, to have made the location here involved either in its own name or through others acting for it.

XI.

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that said wells were drilled in good faith and under such

belief of right. And defendant, Gulf Refining Company of Louisiana, shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said well before it can be held liable, if any such liability there be, for any oil extracted therefrom. And defendant shows that the actual cost of the drilling of said well No. 1 was Twelve Thousand Nine Hundred and Eighty & 6/100 (\$12,980.06) Dollars and that the cost to defendant of the operation of said well No. 1 to July 31st, 1917, was Fourteen Thousand Three Hundred and Fifteen & 63/100 Dollars (\$14,315.63), making a total expense to this defendant in the drilling, equipping and operation of said well of Twenty-seven Thousand Two Hundred and Ninety-five & 69/100 (\$27,295.69) Dollars.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Gulf Refining Company of Louisiana may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said well and of the operation thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Gulf Refining Company of Louisiana and against the plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,
THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—Answer of All Defts. Filed Sept. 29, 1917.

16 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M.
Smilker, P. R. Millard, A. S. Denman, A. Wildenthal,
Gulf Refining Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even
17 if the said defendants are entitled to a set off,
or counterclaim, in any amount, which is denied,
the sum claimed by the defendants is excessive
and should not be allowed.

VIII.

Wherefore plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set off and Counterclaim. Filed Oct. 5, 1917.

18 (INTERROGATORIES PROPOUNDED TO B. R. NORVELL, CHARLES H. STROUCK, A. E. WEAVER, C. M. SMILKER, P. R. MILLARD, A. S. DENMAN, A. WILDENTHAL AND THE GULF REFINING CO. OF LA. BY PLAINTIFF).

(1).

State how, when and under what circumstances the mineral location involved in this case was made.

(2).

State of your own knowledge whether the lines of the said mineral location were staked out on the ground, and was the land posted in any way at or prior to the time when said mineral location was made? If said lines were staked and said land posted, state who staked and posted same.

(3).

State whether or not you in person went upon the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 31, Township 20, North Range 15 West, Louisiana Meridian, Louisiana, in the Parish of Caddo, Western District of Louisiana, at any time prior to the date of said mineral location or since. If your answer is in the affirmative, then state when you went on said land.

(4).

State where you were residing at the time the said mineral location was made, and state what business you were engaged in at that time.

(5).

Is it not a fact that each of the locators who made the said mineral location, which bears the date of December 22, 1908, and is set forth in full in the bill of complaint, resided in the City of Beaumont, in the State of Texas, and is it not a fact that none of the said locators was ever on the tract of land in controversy until after the said location had been made?

19

(6).

Is it not a fact that at the date of said mineral location B. R. Norvell was the President and each of the locators was an employee of the American National Bank of Beaumont, Texas?

(7).

State who selected the land to be included in said mineral location and the circumstances under which said land was selected.

(8).

State at whose request, or at whose suggestion, the said mineral location was made.

(9).

If in answer to Interrogatory 6, you have stated that at the time said mineral location was made you were an

employee of the American National Bank of Beaumont, Texas, then say how and under what circumstances as well as at whose request or suggestion, you joined in said location as one of the locators, or permitted the use of your name as such. State fully how and why you became connected with the said mineral location?

(10).

The said mineral location, as set forth in the bill of complaint, is signed by you through W. W. Bell, Agent and Attorney. State what authority the said W. W. Bell obtained from you with reference to the making of said mineral location, and when such authority was conferred upon him.

(11).

Did you at any time before the date of said mineral location authorize the said W. W. Bell, either verbally or in writing, to make said location for you, or to sign your name thereto?

(12).

In what occupation was W. W. Bell engaged at the time said mineral location was made?

(13).

Was or was not the said W. W. Bell in the employ of the Gulf Refining Company of Louisiana at the time of said mineral location?

(14).

Is it not a fact that you made no effort to explore said land or drill thereon for oil or gas, and almost immediate-

20 ly after said location was made you leased the said property to the Gulf Refining Company of Louisiana?

(15).

In paragraph 5 of your answer to the bill of complaint, it is stated that said property was leased to the Gulf Refining Company of Louisiana on the 24th day of December, 1908. Please attach to your answers to these interrogatories a copy of said lease.

(16).

State whether or not the lease from the said locators to the Gulf Refining Company of Louisiana was recorded in the office of the Clerk and Recorder of the Parish of Caddo, Louisiana.

(17).

State whether or not it was the custom of the Gulf Refining Company of Louisiana to record leases obtained by it.

(18).

State how much money you received out of the production of oil from the said land and state the circumstances under which said money was paid.

(19).

Do you know C. H. Markham and did you know him at the time of and prior to said mineral location?

(20).

In what business was the said C. H. Markham engaged at and prior to the time of said mineral location?

.. (21).

Is it not a fact that at and prior to the time of said mineral location the said C. H. Markham was an Agent, employee, officer or representative of the Gulf Refining Company of Louisiana, or of the J. M. Guffey Company, or the J. M. Guffey Petroleum Company, a corporation domiciled, or doing business in the State of Texas.

(22).

State whether or not the said C. H. Markham made any suggestion to you of any kind relative to the making of the mineral location involved in this suit.

(23).

21 State whether or not you had any conversation with the said C. H. Markham relative to the said mineral location at, or prior to the time same was made. If so, state the substance of said conversation.

(24).

Is it not a fact that you made the said mineral location at the request or suggestion of W. W. Bell, or C. H. Markham, or both, and that they, or either of them, told you that if you would locate on the claim, they or either of them, would give you the sum of \$500.00 each for your interests therein

(25).

State how much money you and each of you received for your interests in the said mineral location, and when and how said money was paid.

(26).

Is it not a fact that after the payment to you of the amount agreed upon between you and the said C. H. Markham and W. W. Bell, either or both, you received no further royalties from the production of said oil, or that all of said production thereafter was converted to the use and benefit of the Gulf Refining Company of Louisiana?

(27).

There is attached to the interrogatories filed in the office of the Clerk of the United States District Court for the Western District of Louisiana, for service on defendant, B. R. Norvell, a copy of an affidavit purporting to have been subscribed and sworn to by the said B. R. Norvell, at Beaumont, Texas, on May 22, 1916, before D. R. Thompson, Mineral Inspector of the General Land Office. Plaintiff hereby demands and calls upon the said B. R. Norvell to admit in writing the execution and genuineness of the said affidavit, saving all just exceptions, if any, thereto.

(28).

State whether or not you, the said B. R. Norvell, executed before D. R. Thompson, Mineral Inspector of the General Land Office, on May 22, 1916, the affidavit referred to in the foregoing interrogatory, and say whether or not the statements therein contained are true and correct.

(29).

In the said affidavit referred to in the foregoing interrogatories, it is stated by B. R. Norvell that the said mineral location was made "by myself and seven others in the American National Bank, at the request of C. H. Markham, then at the head of the Guffey interests." State whether or not the term "Guffey interest" as used in said affidavit was meant to apply to The J. M. Guffey Company, or The J. M. Guffey Petroleum Company, or to some other Company.

(30).

Where was The J. M. Guffey Company, or the J. M. Guffey Petroleum Company domiciled and doing business, and was said Company engaged at any time, and especially at the time of making said mineral location in the production of oil in the Caddo Fields in Louisiana?

(31).

State what relations, if any, existed between the Gulf Refining Company of Louisiana and The J. M. Guffey Company, or The J. M. Guffey Petroleum Company, prior at the time of, and subsequent to, the making of said mineral location.

(32).

Is it not a fact that the mineral location involved in this case was made at the request and suggestion, and for the use and benefit of the Gulf Refining Company of Louisiana?

(33).

State what connection, if any, the Gulf Refining Company of Louisiana, or any of its Agents, representatives, or employees, had with said mineral location prior to, or at the time of, making the same, and how, and through whose agency said Company secured the lease of said land from the locators thereof.

(34).

In your answer to the bill of complaint herein, it is admitted that defendants drilled the wells in controversy. State when said wells were commenced, and when completed.

(35).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy, was \$17,972.76 barrels of the value of \$13,261.31. State whether or not the production of said well as
23 given in your answer is exact, or estimative.

(36).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

(37).

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(38).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how and in what manner said record was kept.

(39).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(40).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the wells in suit.

(41).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.

(42).

State whether or not the Gulf Refining Company of Louisiana is engaged and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

24

(43).

What are the principal products manufactured from petroleum or crude oil?

(44).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(45).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b) the profits made by it from the manufacture and sale of the products of said crude oil.

(46).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(47).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders, participated in the profits made by the purchasing company out of said oil.

(48).

How much money was paid as royalties by the Gulf Refining Company of Louisiana, to the other defendants herein, out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalty was paid, and the amount paid to each.

25

(49).

State whether or not the Gulf Refining Company of Louisiana is still paying royalties to any of the other defendants herein.

(50).

State when the Gulf Refining Company of Louisiana began paying royalties to the other defendants herein,

and when, if at all, said Company ceased paying royalties to said other defendants.

(51).

If in answer to the foregoing interrogatories you have stated that the Gulf Refining Company of Louisiana paid royalties to the other defendants up to a certain time named in your answers and thereafter converted the entire production of said wells to its own use and benefit please state why you did not continue to pay royalties to said other defendants.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Note:—The Gulf Refining Company of Louisiana is required to answer interrogatories numbered 1, 2, 6, 7, 8, 12, 13, 15, 16, 17, 20, 21, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51.

B. R. Norvell is required to answer interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33.

Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman and A. Wildenthal are required to answer interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31, 32, 33.

Indorsed:—Application and Order to File Interrogatories and Interrogatories. Filed Feb. 20, 1918.

26 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1167 In Equity.
B. R. Norvell, et al., Defendants.

In response to and in conformity with the order made in the above numbered and entitled cause on the application of the complainant to take the testimony of B. R. Norvell, Chas. H. Stroeck, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Wildenthal and the Gulf Refining Company of Louisiana, there appeared before me at Beaumont, Texas, on this the 26th day of February, A. D. 1918, the witnesses, B. R. Norvell, Chas. H. Stroeck, A. S. Denman, P. H. Millard and C. M. Smelker, and each of said witnesses having been by me first duly sworn to tell the truth, the whole truth and nothing but the truth, in answering the interrogatories which they are requested to answer by the note attached at the end of said interrogatories, made answer to said interrogatories as follows, to-wit:

The said B. R. NORVELL being first called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

Made by myself, Chas. H. Stroeck, A. S. Denman, A. E. Weaver, C. M. Smelker, Lee Blanchette, P. H. Millard and A. Wildenthal. We appointed W. W. Bell as our attorney-in-fact to have lands surveyed and posted and make declaration of location and record same in the Records of Caddo Parish, Louisiana. The location was made on the 22nd of December, 1908. The circumstances were, as far

as I can recall, that C. H. Markham, a business and social friend of mine, told me he knew of a tract of 160 acres of land in Caddo Parish belonging to the Government which was probably oil land; that he had been advised that his Company could only locate 20 acres; that his Com-

pany was taking up oil lands in that vicinity; that
 27 if myself and friends would locate a mining claim on the land, his Company would buy or lease it from us. After talking over the matter with him and the gentlemen who went in with me, we agreed with Mr. Markham that we would form an association and make the location, and we did so with the definite understanding that while it would be our claim and our land if we secured title we would sell it or lease it to Mr. Markham's Company. We then went ahead and had Mr. Bell to locate the claim.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge the facts as to the land being staked on ground or land posted, as I entrusted all of this to my attorney-in-fact, W. W. Bell.

To Interrogatory Number Three said Witness answered:

I did not.

To Interrogatory Number Four, said Witness answered:

Beaumont, Texas. Banking principally.

To Interrogatory Number Five, said Witness answered:

All resided in Beaumont. I cannot say whether any of locators were on land before location was made; I was not.

To Interrogatory Number Six said Witness answered:

Yes.

To Interrogatory Number Seven said Witness answered:

I have answered this in my answer to the first interrogatory.

To Interrogatory Number Eight said Witness answered:

I have fully answered this in my answer to interrogatory number one.

28 To Interrogatory Number Nine said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

W. W. Bell was appointed attorney-in-fact by me by written power of attorney dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

My recollection is that W. W. Bell was informed verbally or by 'phone that he had been appointed attorney-in-fact by myself and the other mineral locators.

To Interrogatory Number Twelve, said Witness answered:

Leasing and land agent for the Gulf Refining Company of Louisiana.

To Interrogatory Number Thirteen said Witness answered:

He was.

To Interrogatory Number Fourteen said Witness answered:

Yes. Having leased it, I could not operate it myself.

To Interrogatory Number Eighteen said Witness answered:

I received proceeds of oil to the amount of \$500.00. The circumstances were that the Company, our lessee, drilled wells, produced oil and accounted to us for our royalty, as we had agreed in the lease and contract.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

General Manager at Beaumont of the Gulf Refining Company of Louisiana and of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes.

29 To Interrogatory Number Twenty-two said Witness answered:

He told me, as detailed in my answer to interrogatory number one, of the land and its location, etc., and as there detailed suggested the formation of the mining association.

To Interrogatory Number Twenty-three said Witness answered:

Yes, I did, and have stated in my answer to interrogatory number one the substance of same.

To Interrogatory Number Twenty-four said Witness answered:

As stated, myself and associates made the location on information furnished by Mr. Markham and agreed to sell his Company the land, or lease it to his Company, under the circumstances stated in my answer to interrogatory number one. We further agreed to sell it and make transfer when we had received from the proceeds of oil produced from the land \$4,000.00, and this would be \$500.00 each. We afterwards leased the land to Markham's Company, but it was always with the understanding

that we were to receive no royalties after our royalties reached the sum of \$4,000.00.

To Interrogatory Number Twenty-five said Witness answered:

\$500.00 by checks of the company.

To Interrogatory Number Twenty-six said Witness answered:

We only received \$500.00 each. What was done by the Company I don't know.

To Interrogatory Number Twenty-seven said Witness answered:

I admit the execution of the affidavit.

To Interrogatory Number Twenty-eight said Witness answered:

I did, and the statements are true but they are explained by my answer to other interrogatories, as I could not go into details in a short affidavit.

30 To Interrogatory Number Twenty-nine said Witness answered:

The J. M. Guffey Petroleum Company, commonly spoken of as the J. M. Guffey Company.

To Interrogatory Number Thirty, said Witness answered:

At Beaumont, Texas. According to my information it was not.

To Interrogatory Number Thirty-one said Witness answered:

I don't know, except I knew Mr. Markham was acting for both Companies as far as I knew.

To Interrogatory Number Thirty-two said Witness answered:

No, I don't think it is a fact. It was made by me and my associates because we thought we could make a little money out of it. It was made at the suggestion of Mr. Markham in a sense; that is, he told me about the land and that I could form an association and his Company would buy or lease the land.

To Interrogatory Number Thirty-Three said Witness answered:

I think I have fully answered this interrogatory in my answer to interrogatory number one. Mr. Markham secured the lease for his Company.

B. R. NORVELL.

Sworn to and subscribed before me, under my official hand and seal, this the 26th day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,
Notary Public in and for Jefferson County, Texas.

State of Texas,
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness, B. R. Norvell, were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by
31 said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

(Seal) L. M. CHAUVIN,
Notary Public, Jefferson
County, Texas.

The said CHAS. H. STROECK being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

In December, 1908, Mr. B. R. Norvell informed me that he knew of a tract of 160 acres of land near Shreveport that belonged to the United States Government; that under the law a mining association could be formed and locate the land; that Mr. Markham of the Gulf Company told him about the land and agreed if there was an association formed and the land located his Company would lease or buy the land, and if it proved to be oil land would pay the association royalties to the amount of \$4,000.00. I agreed to and did go into the association and we located the land through Mr. W. W. Bell, as our Agent.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge whether the lines of said mineral location were staked on the ground, nor that the land was posted in any way prior to or at the time when the location was made.

To Interrogatory Number Three, said Witness answered:

I did not.

To Interrogatory Number Four said Witness answered:

Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

32 It is a fact that they all resided in Beaumont, Texas. I do not know of my own knowledge whether any of them were on the land or not. I was not.

To Interrogatory Number Six said Witness answered:

It is a fact.

To Interrogatory Number Seven said Witness answered:

W. W. Bell, as our agent and attorney-in-fact, according to my belief. I have stated the circumstances in my answer to interrogatory number one.

To Interrogatory Number Eight said Witness answered:

I have answered this fully in my answer to interrogatory number one.

To Interrogatory Number Nine said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

W. W. Bell was appointed attorney-in-fact by myself and associates by written power of attorney dated December 21st, A. D. 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, in writing as above stated.

To Interrogatory Number Twelve said Witness answered:

My understanding is he was an employee of the Gulf Refining Company of Louisiana engaged in the land Department.

To Interrogatory Number Thirteen said Witness answered:

I think so.

To Interrogatory Number Fourteen said Witness answered:

Yes, it is a fact.

To Interrogatory Number Eighteen said Witness answered:

I received \$500.00 from the proceeds of the sale of the oil by checks of the Company.

33 To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

General Manager of the Gulf Refining Company of Louisiana, and also of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes.

To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-three said Witness answered:

I had no conversation.

To Interrogatory Number Twenty-four said Witness answered:

It isn't a fact that the mineral location was made at the request or suggestion of either Mr. Bell or Mr. Markham so far as I know. As stated, all of my conversations were with Mr. B. R. Norvell.

To Interrogatory Number Twenty-five said Witness answered:

I received \$500.00 by checks of the Company at various times in payment of royalty interest sold.

To Interrogatory Number Twenty-six said Witness answered:

Is it a fact that after I received checks amounting to \$500.00 my claim was fully satisfied, and I don't know what the Company did with regard to the oil after that.

To Interrogatory Number Thirty said Witness answered:

The J. M. Guffey Petroleum Company is domiciled at Beaumont, Texas, and according to my information that Company was not engaged in producing oil in the Caddo fields.

34 To Interrogatory Number Thirty-one said Witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

I have stated all I know about the matter in my answer to interrogatory number one. I went into it because I saw an opportunity to make a little money.

To Interrogatory Number Thirty-three said Witness answered:

I have stated all I know in regard to the matter in answer to Interrogatory number one. I did join in the execution of a lease to the Gulf Refining Company of Louisiana, leasing the land to that Company.

CHAS. H. STROECK.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,
Notary Public in and for Jefferson County, Texas.

State of Texas,
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness Chas. F. Stroeck were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,
Notary Public, Jefferson
County, Texas.

The said A. S. DENMAN being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

In December, 1908, Mr. B. R. Norvell informed me that he knew of a tract of 160 acres of land near Shreveport that belonged to the States Government; that under the law a mining association could be formed and locate the land; that Mr. Markham of the Gulf Company told him about the land and agreed if there was an association formed and the land located his Company would lease or buy the land, and if it proved to be oil land would pay the association royalties to the amount of \$4,000.00. I agreed to and did go into the association and we located the land through Mr. W. W. Bell as our Agent.

To Interrogatory Number Two said Witness answered:

I do not know of my own knowledge of the facts inquired about in this Interrogatory.

To Interrogatory Number Three said Witness answered:

I never did.

To Interrogatory Number Four said Witness answered:

In Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

Yes. They all resided in Beaumont, Texas, and so far as I know none of them were on the land prior to the location. I was not.

To Interrogatory Number Six said Witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said Witness answered:

I have stated in answer to Interrogatory Number one all I knew about this. I do know that W. W. Bell was appointed attorney-in-fact by all of us to make the location.

To Interrogatory Number Eight said Witness answered:

I have stated in answer to interrogatory number one all I know about this. Mr. Norvell was the only man who said anything to me about it.

To Interrogatory Number Nine said Witness answered:

I became one of the locators on the suggestion of Mr.
 36 B. R. Norvell, and did so as I was told I would
 make a little money out of it.

To Interrogatory Number Ten said Witness answered:

All of the locators, including myself, signed a written power of attorney to W. W. Bell, the instrument being dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, by power of attorney dated December 21st, 1908, and as above stated.

To Interrogatory Number Twelve said Witness answered:

He was what is called a "scout" with the Gulf Refining Company of Louisiana and in the Land Department.

To Interrogatory Number Thirteen said Witness answered:

I think so.

To Interrogatory Number Fourteen said Witness answered:

It is a fact.

To Interrogatory Number Eighteen said Witness answered:

I received checks at various times to the amount of \$500.00 as the proceeds of part of the oil produced.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

Vice-President and General Manager of the Gulf Refining Company, of Louisiana, the J. M. Guffey Company and the Gulf Pipe Line Company according to my information and belief.

To Interrogatory Number Twenty-one said Witness answered:

Yes, it is a fact.

37. To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-three said Witness answered:

I did not.

To Interrogatory Number Twenty-four said Witness answered:

It isn't a fact. Neither of the parties mentioned in this interrogatory ever spoke to me about the matter.

To Interrogatory Number Twenty-five said Witness answered:

I received checks at various times aggregating \$500.00. I do not recall the dates when I received same.

To Interrogatory Number Twenty-six said Witness answered:

As stated, I only received checks aggregating \$500.00. As to what was done with the oil produced after that, I have no knowledge.

To Interrogatory Number Thirty said Witness answered:

The J. M. Guffey Petroleum Company was located in Beaumont at the time, and as far as I know was not doing business in the Caddo fields.

To Interrogatory Number Thirty-one said Witness answered:

I have no knowledge of any relations between the Companies.

To Interrogatory Number Thirty-two said Witness answered:

So far as I am concerned, it was not. I have answered as to the circumstances in interrogatory number one.

To Interrogatory Number Thirty-three said Witness answered:

As before stated, Mr. W. W. Bell, was an employee of the Company and he located the land. As stated, Mr. Norvell told me that Mr. Markham stated that his Company would lease the land, and after the location was
38 made I joined in the Lease to the Company.

A. S. DENMAN.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

(Seal)

L. M. CHAUVIN,
Notary Public in and for Jefferson County, Texas.

State of Texas,
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness A. S. Denman were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,
Notary Public, Jefferson
County, Texas.

(Seal)

The said P. H. MILLARD being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said Witness answered:

My recollection about the matter is that sometime in December, 1908, Mr. B. R. Norvell came to me in the Bank and told me that Mr. Markham had told him about a tract of land of about 160 acres somewhere near Shreveport which belonged to the Government, and could be located under mining claims; that Mr. Markham had said that if he, Mr. Norvell and his friends would get up a mining association and locate the land that his Company would buy or lease the land, and Mr. Norvell stated I think that Mr. Markham would pay \$4,000.00 out of the production of oil if we found oil on the land. I agreed with Mr. Norvell to go into the matter with the understanding

39 that I would get one-eighth of what the association got out of it. We appointed Mr. W. W. Bell as our attorney-in-fact to make the location for us.

To Interrogatory Number Two said Witness answered:

I don't know of my own knowledge whether the lines of said mineral location was staked on the ground or the land posted. All this was entrusted to Mr. Bell. Mr. Lee Blanchette went on the land, but I don't remember exactly on what date.

To Interrogatory Number Three said Witness answered:

I did not.

To Interrogatory Number Four said Witness answered:

Beaumont. In the banking business.

To Interrogatory Number Five said Witness answered:

All of the locators did reside in Beaumont, Texas. I cannot say whether any of them were ever on the land, except myself. I was not.

To Interrogatory Number Six said Witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Eight said Witness answered:

I have fully answered this interrogatory in my answer to interrogatory number one.

To Interrogatory Number Nine said Witness answered:

I have fully answered this in my answer to interrogatory number one.

To Interrogatory Number Ten said Witness answered:

40 All of the locators, including myself, signed a written power of attorney to W. W. Bell, the instrument being dated December 21st, 1908.

To Interrogatory Number Eleven said Witness answered:

Yes, by power of attorney as above stated.

To Interrogatory Number Twelve said Witness answered:

According to my information Mr. Bell was an employee of the Gulf Refining Company of Louisiana, in the land Department, leasing lands.

To Interrogatory Number Thirteen said Witness answered:

I think he was.

To Interrogatory Number Fourteen said Witness answered:

Yes, it is a fact that we made no effort to explore the land because we leased it to the Gulf Refining Company as we had agreed to do.

To Interrogatory Number Eighteen said Witness answered:

According to my recollection, I received checks at various times in certain sums as the proceeds of my royalty interest, amounting in all to \$500.00.

To Interrogatory Number Nineteen said Witness answered:

Yes.

To Interrogatory Number Twenty said Witness answered:

Manager of the Gulf Refining Company of Louisiana and of the J. M. Guffey Petroleum Company.

To Interrogatory Number Twenty-one said Witness answered:

Yes, it is a fact.

To Interrogatory Number Twenty-two said Witness answered:

He did not.

To Interrogatory Number Twenty-Three said Witness answered:

I did not.

To Interrogatory Number Twenty-four said Witness answered:

As before stated, I had no conversation whatever with C. H. Markham in regard to the matter, and neither he nor Mr. Bell ever told me they would pay me
41 \$500.00 for my interest.

To Interrogatory Number Twenty-five said Witness answered:

As before stated, I received checks at various times which aggregated \$500.00 as the proceeds of royalty coming to me under our contract.

To Interrogatory Number Twenty-six said Witness answered:

As before stated, I received from the Company checks aggregating \$500.00. What the Company did with any production after that I don't know.

To Interrogatory Number Thirty said Witness answered:

My understanding is that J. M. Guffey Petroleum Company operated only in Texas.

To Interrogatory Number Thirty-one said witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

I have stated in my answer to interrogatory number one all I knew about the formation of the association, and as far as I am concerned it was made because I expected to make some little money out of it.

To Interrogatory Number Thirty-three said Witness answered:

I think I have fully answered this interrogatory in my answer to interrogatory number one. I have stated there all I know about the matter.

P. H. MILLARD.

Sworn to and subscribed before me, under my official hand and seal, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public in and for
Jefferson County, Texas.

42 State of Texas,
 County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness P. H. Millard were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public, Jefferson
County Texas.

The said C. M. SMELKER being next called answered the interrogatories propounded to him as follows:

To Interrogatory Number One said witness answered:

In December 1908 Mr. Norvell came to me and said that he had been told by Mr. Markham of a tract of land near Shreveport of 160 acres which belonged to the United States Government and that it might be oil land, and that if Mr. Norvell would get up a mining association and locate on this land, that Mr. Markham's company would lease or buy it from us. He asked me if I wanted to go into the association and I told him I would be glad to if there was any chance of making anything out of it, and he said that we would make about \$500.00 a piece, and so I went ahead with Mr. Norvell and the others and we formed a mining association and gave Mr. W. W. Bell a power of attorney to locate the land for us, and then we made a lease to Mr. Markham's company as agreed upon.

To Interrogatory Number Two said witness answered:

I don't know of my own knowledge whether this was done or not. We entrusted it all to Mr. Bell, our attorney-in-fact.

To Interrogatory Number Three said witness answered:

I did not.

To Interrogatory Number Four said witness answered:

In Beaumont. In the banking business.

43 To Interrogatory Number Five said witness answered:

Yes; I cannot speak for the others, but I was never on the land before the location was made.

To Interrogatory Number Six said witness answered:

Yes, it is a fact.

To Interrogatory Number Seven said witness answered:

I have fully answered this interrogatory to the best of my ability in my answer to interrogatory number one.

To Interrogatory Number Eight said witness answered:

I have stated in answer to interrogatory number one that it was at the request and suggestion of Mr. Norvell that I went into the association to make the locations.

To Interrogatory Number Nine said witness answered:

I have fully answered this interrogatory in my answer to Interrogatory number one.

To Interrogatory Number Ten said witness answered:

We all made a power of attorney to W. W. Bell, dated December 21st, 1908.

To Interrogatory Number Eleven said witness answered:

Yes, as stated in the power of attorney above mentioned.

To Interrogatory Number Twelve said witness answered:

Mr. Bell was employed by the Gulf Refining Company of Louisiana as land agent.

To Interrogatory Number Thirteen said witness answered:

Yes, he was.

To Interrogatory Number Fourteen said witness answered:

Yes, it is a fact.

44 To Interrogatory Number Eighteen said witness answered:

I received \$500.00 in checks at various times from the Gulf Refining Company of Louisiana in payment of royalty for oil sold.

To Interrogatory Number Nineteen said witness answered:

Yes.

To Interrogatory Number Twenty said witness answered:

He was General Manager of the Gulf Refining Company of Louisiana.

To Interrogatory Number Twenty-one said witness answered:

As stated, my understanding is that he was the General Manager of the Gulf Refining Company of Louisiana.

To Interrogatory Number Twenty-two said witness answered:

He did not.

To Interrogatory Number Twenty-three said witness answered:

I did not.

To Interrogatory Number Twenty-four said witness answered:

As stated, I had no conversation with Mr. Markham, and neither he nor Mr. Bell ever informed me that they would pay me \$500.00 for my interest in the location.

To Interrogatory Number Twenty-five said witness answered:

As stated, I received \$500.00 in checks at various times from the Gulf Refining Company of Louisiana. I do not recall the dates on which these checks were paid.

To Interrogatory Number Twenty-six said witness answered:

As stated, I never had any agreement with C. H. Markham or W. W. Bell, about paying me \$500.00 or any other sum. I was paid \$500.00 as stated under our contract with the Gulf Refining Company of Louisiana, and what the Company did with the production after I was paid this amount I don't know.

45 To Interrogatory Number Thirty said Witness answered:

At Beaumont, Texas. I don't know that the J. M. Guffey Petroleum Company was ever engaged in producing oil in the Caddo fields.

To Interrogatory Number Thirty-one said Witness answered:

I don't know.

To Interrogatory Number Thirty-two said Witness answered:

As far as I am concerned, it was made for my own benefit as I have stated in answer to interrogatory number one the circumstances under which I went into the mining association.

To Interrogatory Number Thirty-three said Witness answered:

I have stated in my answer to interrogatory Number One all I know in regard to the matters inquired about in this interrogatory. I do know that I joined Mr. Norvell and the others in the lease contract to the Gulf Refining Company of Louisiana, but I did not talk with Mr. Markham or any of the representatives of the Gulf Refining Company.

C. M. SMELKER.

Sworn to and subscribed before me, under my official hand and seal, this the 26th day of February, A. D. 1918.

L. M. CHAUVIN,

(Seal)

Notary Public in and for
Jefferson County, Texas.

State of Texas,
County of Jefferson.

I, L. M. Chauvin, do hereby certify that the above and foregoing answers of the witness C. M. Smelker were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness before me.

Witness my hand and seal of office, this the 26 day of February, A. D. 1918.

L. M. CHAUVIN,
Notary Public, Jefferson
County, Texas.

(Seal)

46 Indorsed :—Depositions of B. R. Norvell,
Chas. H. Stroeck, A. S. Denman, P. H. Millard
and C. M. Smelker. Filed Feb. 27, 1918.

47 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1167, In Equity.
B. R. Norvell, et al., Defendants.

In response to the order made in the above numbered and entitled cause on the application of the Complainant to take the testimony of B. R. Norvell, Charles H. Stroeck, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Wildenthal, and the Gulf Refining Company of Louisiana, D. Edward Greer appeared before me on this date as an officer or employe of the Gulf Refining Company of Louisiana to make answers to some of the interrogatories propounded as to which it is noted that

the proper officer or employe of the Gulf Refining Company of Louisiana, who has knowledge of the facts inquired about, shall make answer thereto; and Harry C. Hanszen appeared to make answer to such of the interrogatories as are not answered by said Greer; and said witnesses, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, said GREER makes answer to Interrogatories Nos. (1), (2), (6), (7), (8), (12), (13), (15), (16), (17), (20), (21), (30), (31), (32) and (33) as follows:

As to Interrogatory No. (1) witness answers:

With the exception of F. C. Proctor, General Counsel of the Gulf Refining Company of Louisiana, and Harry C. Hanszen, I am the only employe of the Company at this time having any knowledge of the matter inquired about, who was an employe in December, 1908, in December, 1908, I resided in Beaumont, Texas, and was General Attorney for the Gulf Refining Company of Louisiana. Mr. F. C. Proctor was General Counsel of the Company; Mr. C. H. Markham, now president of the Illinois Central Railway Company, was the General Manager of the Company, both of the last named gentlemen residing at Beaumont, Texas. Harry C. Hanszen became the General Agent of the Gulf Refining Company of Louisiana in the early spring of 1909, and thereafter resided in Shreveport, Louisiana, until about December, 1909. W. W. Bell, was an employe of
 48 the Gulf Refining Company, of Louisiana, and was at that time engaged in buying lands and securing leases in Caddo Parish and in Northern Louisiana generally. About the middle of December, 1908, there was considerable excitement because of the discovery of some large oil wells in the vicinity of Mooringsport, Louisiana, and there was a great rush, (as is

usual in such cases) by oil operators to buy land or secure leases on the same. Miss Lydia Hanszen, who also resided in Beaumont, was Mr. Markham's assistant in the Manager's office.

I do not recall how the Company became advised of the fact that the land in controversy in this case belonged to the Government, but I do recall that I was requested to go to Shreveport and make investigation with a view to determining whether said land really did belong to the Government; and, if so, to ascertain whether or not a valid mining location on the same, or title thereto, could be procured by my company. In making such investigation I found that the land had been covered by applications to purchase under the timber and stone acts of Congress by various parties resident in and around Shreveport; and also that there had been some attempted homestead entries; that such applications had never been finally passed on by the local land office at Natchitoches; and I advised Mr. Markham that I believed that such applications would be finally rejected if protests were filed by mineral locators under the placer mining laws of the United States, setting up that the lands were chiefly valuable for minerals. I further advised Mr. Markham that in my opinion the Company could take up under the placer mining laws only twenty acres in one body, but that it was the opinion of some reputable lawyers that a corporation having more than eight stockholders would be deemed and considered as a mining association, and as such could take up one hundred and sixty acres. I was at Shreveport at this time, and remained there until after the mineral location was made and filed by H. R. Norvell and his associates, and hence I do not know what took place between Mr. Norvell and Mr. Markham, or between Mr. Norvell's

49 associates and Mr. Markham. I do know that Mr. Markham asked my opinion as to whether employes of the Gulf Refining Company of Louisiana could form a mining association, make location on the land, and then transfer the same or lease it to the Gulf Refining Company of Louisiana. I advised him that they could not, unless the corporation could itself do so as having more than eight stockholders, and being thus considered a legal mining association. I recall that I advised; Mr. Markham not to attempt to have employes of the Company make the mineral location. I further advised him (in connection with Mr. F. C. Proctor) that in my opinion there was no legal reason why he should not give to his friends and business associates the information that there was a tract of 160 acres of land, which was possibly oil land, belonging to the United States Government, near development in Caddo Parish; and that he could tell such friends and associates that he would give them a description of the land and all necessary information for them to make a mineral location; and would lease the land from them on behalf of the Company and proceed at once to do the necessary development work to make the claim valid under the United States placer mining laws.

The next thing I heard of the matter was that powers of attorney, executed by all the defendants in this suit except the Gulf Refining Company of Louisiana, to W. W. Bell, were set up to Sheveport, all properly executed, appointing said Bell as the agent and attorney in fact for the mining association formed by said parties to make a mineral location on the land in controversy under the placer mining laws of the United States. Acting under this Mr. Bell did have the land surveyed and staked out, executed the proper notices, and had the same filed in the records of Caddo Parish. This was on the 22nd of

December, 1908. During all the time that this was going on Mr. Proctor was at Beaumont, and he and I were in communication by wire and over the 'phone, and both he and I advised Mr. Markham that it must be distinctly understood that the Gulf Refining Company of Louisiana was not acquiring this mineral location or claim to the land, but that B. R. Norvell and his associates, in the

50 mining association were acquiring such claim and title, and that the only interest which the Gulf Refining Company of Louisiana could have or should seek to get would be by contract with these mineral locators. It was my understanding with Mr. Markham that this was what should be done, and was done. In carrying out this arrangement there was executed between the Gulf Refining Company of Louisiana and B. R. Norvell and his associates the following instrument, to-wit:

"The State of Texas,
Jefferson County.

This contract made and entered unto on this day by and between Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. M. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, constituting a mining association under articles of agreement this day signed by each of us, and hereinafter called party of the first part, and the Gulf Refining Company of Louisiana, a corporation chartered under the laws of Louisiana, hereinafter called party of the second part, witnesseth: That,

Whereas, the party of the first part has this day located, under the placer mining laws of the United States, 160 acres of land in Caddo Parish, State of Louisiana, known and described as the West half of the

Southeast quarter, and the South half of the Northeast quarter, of Section 31 Township 20 North Range 15 West, Louisiana meridian; and

Whereas, party of the first part has not, as yet, discovered minerals in paying quantities on said land; and desires that exploration be made at once thereon, and a well drilled for the purpose of endeavoring to discover petroleum oil on said land; and the party of the second part is a corporation, organized for the purpose, among other things, of drilling wells and producing petroleum oil, and has and maintains an organization and all the materials, implements and tools necessary and appropriate for the purpose of conducting such explorations and drilling wells under advantageous circumstances:

Now, this contract and agreement made between the parties herefo, witnesseth:

1. That the party of the first part hereby consents and agrees that the party of the second part shall go on said land, and take possession thereof, and immediately commence the drilling of a well on some portion of said land, and prosecute such drilling with proper and reasonable diligence to the discovery of oil or abandonment of the attempt, it being understood that if oil is not discovered in the first well drilled, that the second party shall have the right and privilege of drilling as many wells as it pleases and to continue the explorations on said land until satisfied that oil can not be produced therefrom. That the second party shall stand all expenses of every kind and character, in conducting such operations.

2. That if oil is discovered in paying quantities on said land, the party of the second part shall be entitled,

and shall receive, on demand, a conveyance from the party of the first part, conveying said land to it, and all right, title and interest of every kind and character, whether such mineral is discovered before said land is patented, or not; and, after such conveyance is made, if the same shall have been made before said land is patented by the United States Government, then such patent shall issue to the party of the second part as assignee, if it is so desired, and if not, to the party of the first part, said party of the first part agreeing, in such contingency, to make a second deed after said patent shall have issued.

3. If oil is discovered in paying quantities on said land, and title is secured from the United States Government thereto, the party of the second part shall pay to the party of the first part the proceeds of one-half of the oil first produced from said land, taken at its market price on the land, until such proceeds shall amount to the sum of Four Thousand (\$4,000.00) Dollars; and, if the conveyance herein contemplated to be made by the party of the first part to the party of the second part, is made prior to the payment of such consideration, to-wit: the proceeds of one-half of the oil until it amounts to \$4,000.00, then such conveyance shall recite as a consideration, the agreement on the part of the party of the second part to pay such consideration.

4. It is understood between the parties hereto, that it will require a large outlay of moneys to make the explorations on said land, and test the same so as to determine whether the same contains petroleum oil in paying quantities, or not, and that the undertaking on the part of the party of the second part to expend such

moneys and undergo such expense in said one well, is a good and valid consideration to the party of the first part for the making of this contract.

Thus, done, read and signed, this the 22nd day of December, A. D. 1908.

(Signed) B. R. NORVELL,
 (Signed) LEE BLANCHETTE,
 (Signed) PH. H. MILLARD,
 (Signed) A. E. WEAVER,
 (Signed) A. S. DENMAN,
 (Signed) C. M. SMELKER,
 (Signed) A. WILDENTHAL,
 (Signed) CHAS. H. STROECK,
 GULF REFINING COMPANY
 OF LOUISIANA,

By (Signed) C. H. MARKHAM,
 Vice President.

The State of Texas,
 County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson in the State of Texas, and in the presence of R. R. Zierlein and W. H. Land, competent witnesses, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, all persons of full age, and each declared to me that he executed the said foregoing instrument for the purposes and consideration therein expressed, and that his signature to said instrument is genuine.

Thus done, read and signed by the said Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, in the presence of the said R. R. Zierlein and W. H. Land, competent witnesses, and me, Notary Public as aforesaid, on this the 30 day of December, A. D. 1908.

	(Signed)	CHAR. H. STROECK,
52	(Signed)	A. E. WEAVER,
	(Signed)	A. WILDENTHAL,
	(Signed)	C. M. SMELKER,
(Seal)	(Signed)	P. H. MILLARD,
	(Signed)	B. R. NORVELL,
	(Signed)	LEE BLANCHETTE,
	(Signed)	A. S. DENMAN.

Witness:

(Signed)	R. R. ZIERLEIN,
(Signed)	W. H. LAND.
(Signed)	E. CAMPBELL,

Notary Public in and for
Jefferson County, Texas.

The State of Texas,
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified, in and for the County of Jefferson in the State of Texas, and in the presence of Robt. Chisolm and J. A. O'Brien, competent witnesses, on this day personally appeared C. H. Markham, a person of full age, who declared that he is the Vice-President of the Gulf Refining Company of Louisiana, and that he

executed the said foregoing instrument in his capacity as Vice President, for the purposes and consideration therein expressed, and as the act and deed of said Gulf Refining Company of Louisiana, and that his signature to said instrument is genuine.

Thus done, read and signed by the said C. H. Markham, as Vice-President of the said Gulf Refining Company of Louisiana, in the presence of the said Robt. Chisolm and J. A. O'Brien, competent witnesses, and me, Notary Public as aforesaid, on this the 30th day of December, A. D. 1908.

(Signed) C. H. MARKHAM,
Vice President Gulf Refining
Company of Louisiana.

(Signed) E. CAMPBELL,
Notary Public in and for
Jefferson County, Texas.

Witnesses:

(Signed) ROBT. CHISOLM,

(Signed) J. A. O'BRIEN.

State of Texas,
Jefferson County.

Know all men by these presents: That we, Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, all citizens of the United States and residents of Jefferson County, Texas, do hereby form ourselves into a mining association, for the purpose of taking up placer mining claims in Caddo Parish, State of Louisiana, for the development of petroleum oil and gas, and to that end do constitute ourselves a mining association.

In testimony of all of which witness our hands this the 22nd day of December, A. D. 1908.

53 (Signed) CHAS. H. STROECK,
 (Signed) A. E. WEAVER,
 (Signed) A. WILDENTHAL,
 (Signed) LEE BLANCHETTE,
 (Signed) P. H. MILLARD,
 (Signed) B. R. NORVELL,
 (Signed) A. S. DENMAN,
 (Signed) C. M. SMELKER.

Witnesses:

(Signed) R. R. ZIERLEIN,
 (Signed) W. H. LAND.

State of Texas,
 County of Jefferson.

Before me, E. Campbell, a Notary Public in and for Jefferson County, Texas, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, known to me to be the persons whose names are subscribed to the foregoing instrument, and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30 day of December A. D. 1908.

(Signed) E. CAMPBELL,
 (Seal) Notary Public in and for
 Jefferson County, Texas.

For some reason, unknown to me, and probably under the advice of Mr. F. C. Proctor, a second instrument was

executed on the 24th day of December, 1908, by and between said B. R. Norvell and his associates and the Gulf Refining Company of Louisiana, a copy of which is as follows: -

"The State of Texas,
Jefferson County.

This contract made and entered into on this the 24th day of December, 1908, by and between Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, who have constituted themselves into a mining association, under articles of agreement duly signed by them, herein after called parties of the first part, and the Gulf Refining Company of Louisiana, a corporation chartered under the laws of the State of Louisiana, hereinafter called the party of the first part.

Witnesseth: That

Whereas, the parties of the first part, as a mining association have located, under the placer mining laws of the United States, the South half of the Northeast quarter, and the west half of the Southeast quarter of Section 31 Township 20 North, Range 15 West, Louisiana Meridian, for the purpose of producing therefrom petroleum oil and gas, and of taking possession of said land, having surveyed out the boundaries thereof, and fully complied with the Statutes of the United States in such cases made and provided; and

Whereas, the party of the second part is a corporation, engaged in the business of mining for and producing and handling petroleum oil, and is well equipped for such purposes:

Now, this Agreement Witnesseth:

54 1. That for and in consideration of One Dollar to the parties of the first part paid, and the covenants and agreements of the party of the second part herein contained, the parties of the first part have, and do hereby lease, demise and let unto the party of the second part the said land, for the purpose of exploration and production of petroleum oil and gas therefrom; and to that end they give and grant to the party of the second part full right of possession in and to land, with the right to erect all necessary buildings, tanks and machinery of every kind, and to lay pipe lines for the conduct of water, oil and gas, in, upon and through said land. The party of the second part agrees to commence the drilling of a well on said premises within sixty days from the date hereof, and to prosecute such drilling with due diligence to a sufficient depth to develop petroleum oil therefrom, in any strata known to exist in said field, and to fully equip said well with all necessary machinery to successfully and properly operate the same for the production of oil.

2. Party of the second part further agrees, that from the oil produced from said land, it will pay, render and deliver to the parties of the first part an equal one-tenth, (1/10) thereof, into the tanks or pipe lines with which the wells on said land may be connected.

3. It is further agreed that this lease shall run for a period of ten years from the date hereof, and so long thereafter as oil or gas may be produced in paying quantities from said lands by party of the second part.

4. It is further agreed, that as the party of the second part is fully equipped with experienced men, that all

questions as to how many wells shall be drilled on said land, and when and where the same shall be drilled, and to what depth, or how the same shall be drilled and operated, are left to the good judgment and business management of the party of the second part.

Thus done, read and signed by Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman and A. Wildenthal, in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses.

(Signed) CHARLES H. STROECK,
 (Signed) A. E. WEAVER,
 (Signed) LEE BLANCHETTE,
 (Signed) C. M. SMELKER,
 (Signed) P. H. MILLARD,
 (Signed) A. S. DENMAN,
 (Signed) A. WILDENTHAL,
 (Signed) B. R. NORVELL.

Witnesses:

(Signed) W. E. WRATHER,
 J. A. O'BRIEN.

And also executed by said Gulf Refining Company of Louisiana, by its Vice President, C. H. Markham.

GULF REFINING COMPANY
 OF LOUISIANA,

By (Signed) C. H. MARKHAM,
 Vice President.

Witnesses:

(Signed) W. E. WRATHER,
 (Signed) J. A. O'BRIEN.

The State of Texas,
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson, in the State of Texas, and in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses, on this day personally appeared Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. H. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, all persons of full age, and each declared to me that he executed the said foregoing instrument for the purposes and consideration therein expressed, and that his signature to said
55 instrument is genuine.

Thus done, read and signed by the said Charles H. Stroeck, A. E. Weaver, Lee Blanchette, C. M. Smelker, P. R. Millard, B. R. Norvell, A. S. Denman, and A. Wildenthal, in the presence of the said W. E. Wrather and J. A. O'Brien, competent witnesses, and me, notary public as aforesaid, on this the 16 day of January, A. D. 1909.

(Signed) B. R. NORVELL,
(Signed) A. WILDENTHAL,
(Signed) A. E. WEAVER,
(Signed) C. M. SMELKER,
(Signed) P. H. MILLARD,
(Signed) A. S. DENMAN,
(Signed) CHAS. H. STROECK,
(Signed) LEE BLANCHETTE.

(Signed) E. CAMPBELL,
Notary Public in and for Jefferson County, Texas.

Witnesses:

(Signed) W. E. WRATHER,
(Signed) J. A. O'BRIEN.

The State of Texas,
County of Jefferson.

Before me, E. Campbell, a Notary Public duly commissioned and qualified in and for the County of Jefferson in the State of Texas, and in the presence of W. E. Wrather and J. A. O'Brien, competent witnesses, on this day personally appeared C. H. Markham, a person of full age, who declared that he is the Vice President of the Gulf Refining Company of Louisiana, and that he executed the said foregoing instrument in his capacity as Vice President, for the purposes and consideration therein expressed and as the act and deed of said Gulf Refining Company of Louisiana, and that his signature to said instrument is genuine.

Thus done, read and signed by the said C. H. Markham, as Vice President of the said Gulf Refining Company of Louisiana, in the presence of the said W. E. Wrather and J. A. O'Brien, competent witnesses and me, Notary Public as aforesaid, on this the 16 day of January, A. D. 1909.

(Signed) C. H. MARKHAM,

Vice President Gulf Refining Company of Louisiana.

(Signed) E. CAMPBELL,

(Seal) Notary Public in and for
Jefferson County, Texas.

Witnesses:

(Signed) W. E. WRATHER,
J. A. O'BRIEN.

My impression is that Mr. Proctor and I discussed the matter and both he and I had some doubt as to whether the mineral locators could make a binding contract to sell the mineral location prior to the discovery of minerals,

but neither of us had any doubt about the power of the locators to execute a common mineral lease for the purpose of securing development; and we, therefore, advised Mr. Markham to take from the mineral locators such a lease, and accordingly the second instrument

56 above copied, was executed. Immediately after this mineral location was filed, it became evident that the parties having the stone and timber files in the Land Office and the Homestead entries, were going to make trouble about securing possession of the land, and with considerable difficulty and expense my company did take possession of the land, and, notwithstanding threats of violence from various quarters, maintained such possession and proceeded at once to get the necessary machinery and materials on the ground, and began drilling a well early in January, 1909. In the meantime we employed counsel at Natchitoches (Judge Carver) and lawyers at Shreveport, filed protests in the Land Office, and followed this up with hearings before the Commissioner; and after a lengthy and expensive litigation succeeded, by the actual discovery of minerals before the hearing, in proving that lands were mineral lands, and procured the rejection of these stone and timber and homestead entry claims by the Land Department. In doing all this we had to fight several injunction suits, both in the state and Federal Courts, by these claimants; and it is very evident now that this energetic prosecution of the mineral file and the resisting of the stone and timber applications for purchase and homestead entries in the local Land Office at Natchitoches, preserved the land to the United States; without this effort and expenditure of large sums of money, no doubt the land would have been awarded and patented to these applicants. A few days before the matter of the formation of the mining association by Mr. Norvell and his associates, I learned of the withdrawal or

der of December 15, 1908, made by the Secretary of the Interior under direction of the President, and investigated to the best of my ability the question of the validity of such order. I came to the conclusion that the Executive Department did not have the legal authority to make the withdrawal order, and so advised Mr. Markham. Mr. Proctor gave the same opinion, and I think I can truthfully say that such was practically the unanimous opinion of the lawyers at Shreveport and Natchitoches. A lawyer at Washington, D. C., when we consulted him gave the same advice.

57 Certainly the Company made the agreement with Norvell and his associates and expended its money in drilling the wells and operating generally under the advice of its lawyers that the withdrawal order was ineffectual. From the fact that four of the nine judges of the Supreme Court, in deciding the Midwest Oil Company case, agreed with us in this opinion, it would seem that there was considerable room for doubt about it, to say the least.

To the Interrogatory No. (2) this witness answers:

I do not know of my own knowledge whether the lines of said mineral location were staked out on the ground, or that the land was posted in any way, at or prior to the time when the location was made. I do know that I saw the field notes of the surveyor who claimed to have made such location on the ground and staked the same out under the superintendence of Mr. Bell.

To the Interrogatory No. (6) witness answers:

It is a fact that B. R. Norvell was the President of the American National Bank of Beaumont, Texas, at the date of the mineral location. I do not think that all of the locators were employes of the Bank, but I think most of them were.

To the Interrogatory No. (7) witness answers:

See answer to Interrogatory No. (1) for full answer to this interrogatory.

To Interrogatory No. (8) witness says:

See my answer to Interrogatory No. (1) for answer to this question in full, so far as the witness can answer the same.

In answer to Interrogatory No. (12) witness states:

As stated in my answer to Interrogatory No. (1), W. W. Bell, was an employee of the Gulf Refining Company of Louisiana at the time the location was made, and was engaged in taking up leases and in buying lands for said Company.

58 In answer to Interrogatory No. (13) witness says:

I have answered this in my answer to Interrogatory No. (12).

In answer to Interrogatory No. (15) witness says:

I have included copy of the lease in my answer to Interrogatory No. (1), to which I now refer.

To Interrogatory No. (16) witness answers:

It was not.

To Interrogatory No. (17) witness answers:

Speaking generally, it was the custom of the Company to record its leases, but by no means all of its leases were recorded. The reason why this lease was not recorded was that there seemed at that time to be a violent prejudice in that part of Caddo Parish against big oil companies (as the larger operators were called), and threats of violence against their employes if they attempted to take up

any of the Government lands; and we thought we might as well avoid publicity as much as we could.

In answer to Interrogatory No. (20) witness says:

As I have stated in my answer to Interrogatory No. (1) C. H. Markham was at the time of the mineral location the General Manager of the Gulf Refining Company of Louisiana, and had been for several years.

In answer to Interrogatory No. (21) witness states:

Yes, it is a fact that at and prior to the time of said mineral location C. H. Markham was an agent and employe and an officer and representative of the Gulf Refining Company of Louisiana. He was Vice-President and General Manager of the same; he occupied a similar position with the J. M. Guffey Petroleum Company, a Texas corporation; there was no such concern then as the J. M. Guffey Company.

59 In answer to Interrogatory No. (30) witness says:

As before stated, there was no such concern as the J. M. Guffey Company in existence at the time the mineral location in question was made. The J. M. Guffey Petroleum Company at such time was domiciled at Beaumont, Texas, and engaged in the production of oil in Texas, but was not engaged in the production of oil in Caddo Parish, Louisiana.

In answer to Interrogatory No. (31) witness states:

The only relation which existed between the J. M. Guffey Petroleum Company and the Gulf Refining Company of Louisiana, prior to and at the time of and subsequent to the making of the mineral location in question, was that the stockholders of the two corporations, were largely the same, and they had many officers in common.

In answer to Interrogatory No. (32) witness says:

I have set out in full detail in my answer to Interrogatory No. (1) the facts and circumstances surrounding the mineral location involved in this case. My opinion is that the mineral location involved in this case was made at the suggestion of C. H. Markham, as before explained, but that it was not made for the use and benefit of the Gulf Refining Company of Louisiana, but was made by the locators for their own use and benefit on information given to them by Mr. Markham of the existence and location of the land, with an understanding that on account of his having given such information to them the locators would give to the Gulf Refining Company of Louisiana a lease on the land in preference to giving such lease to some other person or corporation.

In answer to Interrogatory No. (33) witness says:

I have stated in detail in my answer to Interrogatory No. (1) all of the facts within my knowledge relative to the connection of any and all the agents of the Gulf Refining Company of Louisiana with the mineral location in question. The lease was acquired by Mr. C. H. Markham from the mineral locators at Beaumont, Texas, as previously stated.

60 Witness further states that he has no knowledge of the matters inquired about in the other interrogatories which the officers or the agents of the Gulf Refining Company of Louisiana are required to answer.

D. EDWARD GREER.

Sworn to and subscribed before me, under my official hand and seal, this the 27th day of February, A. D. 1918.

M. SAUNDERS,

(Seal)

Notary Public in and for Harris County, Texas.

State of Texas,
County of Harris.

I, M. Saunders, do hereby certify that the above and foregoing answers of the witness D. Edward Greer were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by said witness, before me.

Witness my hand and seal of office, this the 27th day of February, A. D. 1918.

M. SAUNDERS,
(Seal) Notary Public in and for Harris County, Texas.

Witness HARRY C. HANSZEN, as an agent and employee of the Gulf Refining Company of Louisiana, appeared and made answer to Interrogatories Nos. 34 to 51, both inclusive, as follows, to-wit:

To Interrogatory No. (34) said witness answers:

Two wells were drilled on the land in controversy, as follows: Norvell No. 1, commenced December 26, 1908, completed March 25, 1909, No. 2, commenced January 8, 1909, completed March 28, 1909.

To Interrogatory No. (35) said witness answers:

In stating in the original answer the amount
61 of production and the value of the same a slight error was made; this error was occasioned by the fact that a man by the name of Edwards had a claim on a part of the land in controversy which I understood to be an application for purchase under the Stone and Timber Act, and one of the wells was drilled on this tract. The Accounting department kept the production of this well as from the Edwards Tract, and there was produced from

this well, up to July 31, 1917, a total of 1717.53 barrels, and this was not included in the 17,972.76 barrels stated in the answer as being the total production. The total production is, therefore, 17,972.76 plus the production from the Edwards well of 1717.53, making a total of 19,690.29 barrels, as of July 31, 1917; the value of this total being \$14,152.07. The above statement of the production is not estimated, but is exact according to our books.

To Interrogatory No. (36) witness answers:

The total production up to July 31, 1917, was 19,690.29 barrels, and from July 31, 1917, to January 1st, 1918, 206.29 barrels.

To Interrogatory No. (37) witness answers:

The wells on the property in controversy were operated separately from any and all other wells operated by the Company.

To Interrogatory No. (38) witness answers:

Yes, a separate and complete record was kept by the Company of the oil produced from the wells on the land. Record of this production was kept in the usual way, as follows: the oil was pumped into settling tanks on the lease, a daily production gauge being taken at 7 A. M. and a record kept thereof. Deliveries were made from these tanks into pipe lines, careful gauge being taken of each delivery and run ticket issued. Tank tables were computed by competent tank gauge engineer, and the

Accounting Department of the Gulf Refining

63 Company of Louisiana computed the runs from run tickets and tank tables, and an accurate record was kept as to the exact amount of oil delivered into pipe lines.

To Interrogatory No. (39) witness answers:

As stated in answer to previous interrogatories, the amount of production was not estimated, and the production was not in connection with any wells on lands not in suit.

To Interrogatory No. (40) witness answers:

Mr. L. E. Delcuze, Auditor of the Company, has given me all the information from the books of the Company. His address is Gulf Building, Houston, Texas.

To Interrogatory No. (41) witness answers:

The total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy is \$14,561.81. This value is exact and not approximate. The value is based on the field market prices at the time of production.

To Interrogatory No. (42) witness answers:

The Gulf Refining Company of Louisiana was engaged in the production and sale of oil, but not in the manufacture of oil. The oil produced from the land in question was sold by the Gulf Refining Company of Louisiana in its crude state and not manufactured by it.

To Interrogatory No. (43) witness answers:

As far as I know the principal products manufactured from petroleum are gasoline, kerosene, naphtha, lubricating oils, fuel oils, and in some cases paraffine wax.

To Interrogatory No. (44) witness answers:

Gulf Refining Company of Louisiana manufactured no products from the oil extracted from the land in controversy.

To Interrogatory No. (45) witness answers:

63 The Gulf Refining Company of Louisiana made no profits whatever either from the sale of the crude oil extracted from the land in controversy or from the manufacture and sale of the products of said crude oil. The Company did not manufacture the crude oil into refined products, but sold the oil in its crude state.

In drilling the wells and operating the same on the land in controversy the Gulf Refining Company of Louisiana expended the sum of \$44,203.46. It produced from the land in question a total of 19,896.58 barrels. The entire gross proceeds of the sale of all this oil amounted to the sum of \$16,115.46. The gross proceeds of the sale of oil as above stated included the expense of pipage and delivery. The market value of the oil in the field was \$14,561.81, and the pipage and delivery expense was \$1,553.65. The Company also paid B. R. Norvell, Chas. H. Stroeck, Lee Blanchette, A. E. Weaver, C. W. Smelker, Paul H. Milard and A. S. Denman the sum of \$4,000.00 as proceeds of their royalty oil. The net proceeds received by the Gulf Refining Company of Louisiana from the sale of the oil produced from said land was \$10,561.81, and since the Company had expended in drilling and operating the sum of \$44,203.46 and paid out for royalties the sum of \$4,000.00, it has a net loss of \$33,641.65.

To Interrogatory No. (46) witness answers:

That all the oil produced by the Gulf Refining Company of Louisiana from the land in controversy was sold to the Gulf Pipe Line Company, delivery being made either into tank cars or into pipe lines of that Company.

To Interrogatory No. (47) witness answers:

(a) All the oil was sold to the Gulf Pipe Line Company.

(a) I have answered this in my answer to Interrogatory No. 45.

64 (c) I have answered this in my answer to Interrogatory No. 46.

(d) So far as I know the only relation which existed between the Gulf Refining Company of Louisiana and the Gulf Pipe Line Company, the purchaser of said oil was that they had a number of stockholders and officers in common.

(e) I cannot answer this question except to state that so far as stockholders of Gulf Refining Company of Louisiana and Gulf Pipe Line Company were common, the stockholders of the former company no doubt participated in the profits, if any, made on the sale of the oil by the Gulf Pipe Line Company.

To Interrogatory No. (48) witness answers:

The Gulf Refining Company of Louisiana made the following payments as royalty from oil produced from the land in controversy: B. R. Norvell, \$500.00; Chas. H. Stroeck, \$500.00; Lee Blanchette, \$500.00; A. E. Weaver, \$500.00; C. W. Smelker, \$500.00; Paul H. Millard, \$500.00; A. S. Denman, \$1,000.00. A. Wildenthal was not paid any royalty because he transferred all of his right to royalty payments to A. S. Denman, and the share which would have gone to him was paid by the Company to said Denman.

To Interrogatory No. (49) witness answers:

It is not.

To Interrogatory No. (50) witness answers:

The first payment of royalties made by Gulf Refining Company of Louisiana to the other defendants was March 1st, 1911, and the last payment was made May 6, 1914.

To Interrogatory No. (51) witness answers:

The reason why the Gulf Refining Company of Louisiana ceased paying royalties to the other defendants in this suit was because it had fulfilled its contract with them and paid to them the amount of royalties contracted to be paid to them.

65

HARRY C. HANSZEN,
Agent Gulf Refining Company
of Louisiana.

Sworn to and subscribed before me, under my official hand and seal, this the 28th day of February, A. D. 1918.

(Seal) M. SAUNDERS.

State of Texas,
County of Harris.

I, M. Saunders, do hereby certify that the above and foregoing answers of the witness Harry C. Hanszen were made before me, reduced to writing and read over to the witness, and were then signed and sworn to by the said witness before me.

Witness my hand and seal of office, this the 28th day of February, A. D. 1918.

M. SAUNDERS,
(Seal) Notary Public in and for
Harris County, Texas.

Indorsed: Deposition of B. R. Norvell, et al. Filed
Mar. 2, 1918.

66 In the District Court of the United States for
the Western District of the State of Louisiana.

United States of America,
vs. No. 1167, In Equity.
B. R. Norvell, et al.

State of Texas,
County of Dimmit.

Be it remembered, that before me, W. N. Terry, Clerk of the District Court in and for Dimmit County, Texas, on this day personally appeared A. Wildenthal, who after first being by me duly sworn, made the following as his answers to the attached Interrogatories in the above entitled and numbered cause, to-wit:

To Interrogatory No. 1, witness answers:

As near as I can now remember, sometime during the latter part of the year 1908, Messrs. B. R. Norvell, A. E. Weaver, C. H. Stroeck, P. H. Millard, A. S. Denman, C. M. Smelker and myself, all then of Beaumont, Texas, associated ourselves for the purpose of making some class of mineral or mining locations, and at said time if my recollection is clear, we signed a power of attorney authorizing a Mr. W. W. Bell to act for us in making locations. This was something over nine years ago while I was about twenty four years of age, working in the American National Bank of Beaumont, Texas, and the circumstances as near as I can refresh my memory regarding same, is that one morning at about ten or eleven o'clock, the date I cannot recall, but it was during the latter part of the year 1908, the above named associates mentioned were in the President's office of said Bank and I believe it was either Mr. Norvell or Mr. Stroeck called me to join

them in the proposition; and I being young and inexperienced in business organizations, and Mr. Norvell and Stroeck being my employers in said bank, I having every confidence in them, joined in such association in good faith.

To Interrogatory No. 2, witness answers:

I do not know how any surveys or land marks were established or staked, having never been within the State of Louisiana, and left the whole proposition up to Mr. Norvell and the other more experienced business members of the association and the said agent of their selection.

To Interrogatory No. 3, witness answers:

No, I have never been upon the land mentioned, nor have I ever been in the State of Louisiana.

To Interrogatory No. 4, witness answers:

I was then residing in the City of Beaumont, Texas, and employed as Collector & Exchange Teller in the American National Bank of said City.

To Interrogatory No. 5, witness answers:

Yes, each of the members of said association were residing in the city of Beaumont, Texas, and personally I was never upon said tract, but do not know whether or not any of the other members were.

To Interrogatory No. 6, witness answers:

Yes.

To Interrogatory No. 7, witness answers:

I believe Mr. Bell made the location for said members of the association.

To Interrogatory No. 8, witness answers:

This I do not know of my own knowledge, for as stated, I was then unfamiliar with business organizations and relied upon Mr. Norvell and the other more experienced members managing same.

67 To Interrogatory No. 9, witness answers:

As stated in my answer to Inty. No. 1, it was either at Mr. Norvell's or Mr. Stroeck's suggestion, and knowing them to be successful business men and connected with the proposition and also being an employee under them and believing the undertaking to be a straight proposition, I consented to join with them in the association.

To Interrogatory No. 10, witness answers:

As stated in one of my previous answers, at about the time we associated ourselves, we signed some sort of an authority or power of attorney authorizing Mr. Bell to act for us.

To Interrogatory No. 11, witness answers:

The only time I can recall is at the instance when we associated ourselves as set out in my previous answers and as stated in the answer next above, we signed a power of attorney authorizing Mr. Bell to act for us.

To Interrogatory No. 12, witness answers:

I did not personally know Mr. Bell nor do I know what his occupation was; the selection of him was made by some of the more experienced members of the association, and through my confidence in Mr. Norvell's and Mr. Stroeck's judgment I consented to signing the power of attorney.

To Interrogatory No. 13, witness answers:

I do not know.

To Interrogatory No. 14, witness answers:

As near as I can now recall, we, the members of said association, signed some sort of a paper, which I understood to either be a transfer or lease contract in favor of the Gulf Refining Company. Not being familiar with such class of documents and knowing that the more experienced members of the Bank had also signed the same class of document, and not being inclined to be contrary, I also signed same.

To Interrogatory No. 18, witness answers:

I have never received any proceeds from oil from said land. As near as I can now recall, a number of months subsequent to signing the above mentioned transfer or lease to the Gulf Refining Company, I resigned my position with the American National Bank, and a few days before leaving the employ of said Bank, I transferred all of my interests or equities in said association to Mr. A. S. Denman, one of the other members as hereinabove listed, and as consideration for same said Denman conveyed to me a lot or parcel of town property in the town of Cotulla, Texas, of an approximate value of, as near as I can now recall, of about \$50.00. If any money was received from the production of oil from said land it may have probably been received by my said assignee Mr. A. S. Denman, as I personally have never received any sum whatever from such productions.

To Interrogatory No. 19, witness answers:

No, I was not personally acquainted with Mr. Markham, I only knew him by sight.

To Interrogatory No. 20, witness answers:

I do not know what business Mr. Markham was engaged in. I always supposed him to be a lawyer.

To Interrogatory No. 21, witness answers:

As stated in the next above answer, I do not know with whom he was engaged, have never been personally acquainted with him, but have often seen him visiting the officers of said Bank and presumed that he was a lawyer.

To Interrogatory No. 22, witness answers:

I do not remember of Mr. Markham ever making any suggestion to me at all with regard to such location nor regarding any other business transaction.

To Interrogatory No. 23, witness answers:

No.

To Interrogatory No. 24, witness answers:

No, such is not a fact. As stated in my previous answers, I joined in such association through the suggestion of either Mr. Norvell or Mr. Stroeck, as near as I can now remember. I did not know anything about any \$500. payment until after I had signed the conveyance or lease contract to the Gulf Refining Company, I heard some of the boys in the Bank, who were members of the association, discussing the signing of same and it was then I learned that we would at some time receive \$500. for our interests or share therein.

To Interrogatory No. 25, witness answers:

As stated in my answer No. 18, I have never received any money for my interests in said location, having traded my equities off to Mr. Denman for the town lot mentioned.

To Interrogatory No. 26, witness answers:

As stated in my answer to Inty. No. 25 and No. 18, I traded my interests off to Mr. Denman and have never

claimed nor received any moneys from the Gulf Refining Company nor any one else for royalties nor do I know anything regarding any such productions of oils from said land nor do I know of any benefits derived by the Gulf Refining Company or any one else from oils or productions from the land mentioned. Since I traded off my interests to Mr. Denman I heard nothing further from the proposition and it had almost escaped my memory until I was served with the process in this suit and read same over carefully and have been trying ever since to refresh my memory as to what transpired at the time we associated ourselves. The dates of the signing of the power of attorney and lease contract to the Gulf Refining Company having escaped my memory entirely, and not having received any moneys or other things from productions, I traded same off as stated and paid no further attention to the matter.

To Interrogatory No. 27, witness answers:

I do not know anything at all regarding this affidavit.

To Interrogatory No. 28, witness answers:

My answer to Inty. No. 27, covers this.

To Interrogatory No. 29, witness answers:

My answer to Inty. No. 27, covers this.

To Interrogatory No. 30, witness answers:

I do not know.

To Interrogatory No. 31, witness answers:

I do not know.

To Interrogatory No. 32, witness answers:

The Gulf Refining Company never made any suggestion to me regarding the mineral location, and as stated in

previous answers, the matter was suggested to me either by Mr. Norvell or Mr. Stroeck when we so associated ourselves.

To Interrogatory No. 33, witness answers:

I do not know what connection, if any said Gulf Refining Co. or its agents, representatives or employees had with such mineral location. As stated in my previous answers, I only knew Mr. Norvell, Mr. Stroeck and the other members of our association in the premises, and as to the making of the mentioned lease contract, all that I can now recall is that same was brought to the Bank by some one, whom I do not know or now recall, and knowing that Mr. Norvell, Mr. Stroeck and other members of such association were signing same, I also joined in the transaction.

A. WILDENTHAL.

The State of Texas,
County of Dimmit.

The foregoing answers to the attached Interrogatories were subscribed and sworn to before me by A. Wildenthal, who upon his oath states that same are true and correct to the best of his knowledge and belief. This February 26th, 1918.

Given under my hand and seal of office this the 26th day of February, A. D. 1918.

W. N. TERRY,

(Seal)

Clerk of the District Court
in and for Dimmit County,
State of Texas.

Indorsed: Answer of A. Wildenthal to Interrogatories to him propounded. Filed Apr. 20, 1918.

B.

70 United States District Court, Western District
of Louisiana.

United States,

vs.

No. 1167.

R. B. Norvell, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,
(Seal) Judge.

March 29, 1918.

Filed Mar. 29, 1918.

71 United States District Court for Western District of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1167.

B. R. Norvell, et al.

Evidence taken before the Honorable E. H. Randolph, Special Master in the above cause, on June 11th, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

Appearances.

Hon. R. A. Hunter, appeared on behalf of the Government.

Messrs. Thigpen & Herold, appeared for Defendants.

It is admitted by Counsel for Defendants that the property in controversy herein, was at the time of the location herein involved the property of the United States Government and still remained the property of the Federal Government, unless the location in question is a valid one.

Counsel for Plaintiff offered in Evidence application and order to file Interrogatories, addressed to B. R. Norvell, Charles H. Steouck, Lee Blanchey, A. E. Weaver, C. M. Smelker, P. H. Millard, A. S. Denman, A. Winglen-thal and the Gulf Refining Company of Louisiana, together with the answers of said defendants and of D. Edward Greer and Harry C. Hansen, on behalf of the Gulf Refining Company of Louisiana, together with the exhibits at-

tached to said answers, said interrogatories and answers thereto being now on file.

Counsel for Plaintiff also offers in Evidence affidavits executed by H. R. Norvell, before D. R. Thompson, Mineral Inspector, together with written demand upon said Norvell to admit or deny the execution of said affidavits and the written statement of said Norvell, admitting the execution thereof, said documents being already on file.

72 JAMES W. NEAL, a witness for the Plaintiff, being first duly sworn testified as follows:—

On Direct Examination he said:—

By Mr. Hester:—

Q. Are you a Special Agent for the General Land Office?

A. I am.

Q. State whether or not, in your official capacity you made an examination of the records of the Gulf Refining Company of Louisiana to ascertain the quantity and value of oil produced by it from the land in suit?

A. I did.

Q. What data was your investigation based upon?

A. Based upon the books of the Gulf Refining Company of Louisiana and the run tickets of the pipe line Company, of the oil run.

Q. Where was your investigation made?

A. Houston, Texas.

Q. Have you prepared a statement showing the result of your examination of the books and records of the Gulf Refining Company of Louisiana?

A. I have.

Q. Please state what that statement shows?

A. The statement shows that there was run from the Norvell oil Wells Nos. 1 & 2 from March 1909 to December 31st, 1917, 19,896.58 barrels of oil of the value of \$14,561.81. The division of the oil and value was made in a lump sum to the different royalty claimants, B. R. Norvell receiving \$500.00, or the value of 863.83 barrels of oil; C. H. Stoenck received \$500.00 or the value of 863.83 barrels of oil; Lee Blanchett received \$500.00 or the value of 863.83 barrels of oil; A. E. Weaver received \$500.00 or the value of 863.83 barrels of the oil; C. M. Smelker received \$500.00 or the value of 863.83 barrels of the oil; P. H. Millard received \$500.00 as value of 863.83 barrels of oil; A. S. Denman received \$1,000.00 as the value of 1727.64 barrels of oil; the total paid in royalties or under contract by the Gulf Refining Company of Louisiana was \$4,000. The total value of the oil retained by the Gulf Refining Company of Louisiana as its part of the value of the oil run from the wells is \$10,561.81 or the value of 12,985.98 barrels of oil; the pipe line earnings of the Company on the oil run was \$1553.66 making the total received by the Company \$12,115.47, for its part of the oil sold from the wells.

Q. The Gulf Refining Company of Louisiana, produced all of the oil from the land did it not?

A. Yes, sir.

Q. Did your investigation show when the wells were drilled?

A. Yes, sir. Well Number one was begun December 26th, 1908. That is the date they put up the derrick, and they began to drill the well January 5th, 1909, and completed the well on March 25th, 1909. Well Number two was begun on January 8th, 1909 and completed March 28th, 1909.

Q. Those lands were drilled on the land in suit, were they not?

A. They were.

Q. I hand you statement marked Plaintiff "A" and referring to that statement so far as it relates to the production, value and division of the oil and ask you to say whether it is correct or not and was made from the books of the Gulf Refining Company of Louisiana?

A. The statement is correct and was made from the books of the Gulf Refining Company of Louisiana.

Counsel for Plaintiff offers the statement identified by the witness marked "A" in evidence, in so far as it relates to the production, value and division of the oil in question.

Filed in Evidence and marked exhibit "A".

On Cross Examination he said:—

By Mr. Herold:—

Q. Mr. Neal on your statement you have "Total pipe Line earnings on oil run \$1,553.66" what does that represent?

A. That represents the earning of the Pipe Line Company for running the oil from the land in question to the Company's receiving tanks on the Texas line. It was my understanding from the records and statements of the bookkeeper of the Gulf Refining Company of Louisiana, that they considered the oil at one price on the land and add to that price the pipe line earning, which gives the value of the oil in the receiving tanks of the Company on the Texas line.

74 Q. The sum of \$10,561.81 then represents the value of the oil in the tanks on the property itself, and

then you would add the item pipe line earnings \$1,553.66, which represents the carriage charges from the property in dispute to the tanks of the Gulf Refining Company on the Texas State line?

A. It does.

Q. You have no information as to the cost to the Company of handling that oil?

A. No, sir.

Q. Mr. Neal, in making your investigation in this case, in your official capacity, did you examine into the cost of drilling, equipping and operating these wells?

A. I did.

Q. From such examination, can you state what it cost the Gulf Refining Company of Louisiana to drill, equip and operate the wells up to December 31st, 1917?

A. Yes, sir. The cost of drilling, equipping and operating the wells to December 31st, 1917, was \$27,998.10.

Q. The cost of drilling, equipping and operating well No. 2 up to the time that it ceased production of oil was what?

A. \$13,526.40.

Q. Making the total cost of drilling, equipping and operating this property what?

A. \$41,524.50.

Q. These wells began to produce oil on the date mentioned as the day of completion of the respective wells?

A. They did.

Counsel for defendant offers the statement referred to in evidence, being the statement heretofore offered by Plaintiff and marked "A."

Q. In your examination of this case Mr. Neal, did you investigate at all into the corporation and organization of the Gulf Refining Company of Louisiana, with a view

75 of determining the number of stockholders in that Company in 1908?

A. No, sir.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, did you ascertain when Well No. 2 was drilled?

A. That is shown on the statement there.

Q. It shows on the statement that it was commenced January 8th, 1909?

A. Yes, sir.

Plaintiff's Rest.

Defendant reserves the right to take depositions of J. L. Jones and ...

I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken in the above numbered and entitled cause.

R. B. COOK,

Stenographer.

76

Suit No. 1167.

United States vs. B. R. Norvell, et al.

Statement of Oil Run from Norvell Nos. 1 and 2 from March, 1909, to December 31, 1917, Divisions of Oil and Values.

	Barrels	Value
Total oil run from wells Norvell		
Nos. 1 and 2 to December 31,		
1917	19,896.58	\$14,561.81

Division of Oil and Value.

B. R. Norvell	863.83	500.00
C. H. Stoeck	863.83	500.00
Lee Blanchett	863.83	500.00
A. E. Weaver	863.83	500.00
C. M. Smelker	863.83	500.00
P. H. Millard	863.83	500.00
A. S. Denman	1727.64	1,000.00

Total paid in royalty or under contract		\$4,000.00
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Total oil and value retained by the Gulf Refining Co. of La.	12,985.98	\$10,561.81
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Total Pipe Line Earnings on oil run		1,553.66
Total		\$12,115.47

Cost of drilling, equipping and operating No. 1 to December 31, 1917	\$27,998.10	
--	-------------	--

Cost of drilling, equipping and operating No. 2 to July, 1909, when well ceased to produce oil	\$13,526.40	\$41,524.50
--	-------------	-------------

Commenced drilling No. 1 December 26, 1908, and completed same March 25, 1909.

Commenced drilling No. 2 January 8, 1909, and completed same March 28, 1909.

No. 1167. Plff. "A." R. B. Cook, Stenographer.

77 Gulf Refining Company of Louisiana.
Caddo Parish.

Statement showing Pipe Line Runs from Norvell No. 1
from March, 1909, through December, 1917.

Year	Barrels	Price	Amount
1909			
March	21.00	40c.	8.40
April	913.57	45	411.11
May	494.18	50	247.09
June	718.88	55	395.38
July	663.16	55	364.74
August	548.90	55	301.90
September	356.68	60	214.00
October	519.79	60	311.87
November	342.33	60	205.40
December	186.00	60	111.60
	<hr/>		<hr/>
	4,764.49		2,571.49

1910			
January	311.08	60	186.65
February	320.06	60	192.04
March	317.92	60	190.75
April	164.85	60	98.91
May	146.28	40	58.52
June	311.37	40	124.55
July	326.44	38	124.05
August	340.21	40	136.08
September	180.97	40	72.39
October	170.91	40	68.36
November	165.35	40	66.14
December	182.10	42	76.48
	<hr/>		<hr/>
	2,937.54		1,394.92

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1911

January	224.91	44	98.96
February	138.45	44	60.92
March	228.30	50	114.15
April	163.12	50	81.56
May	180.05	55	99.03
June	171.04	60	102.62
July	232.00	60	139.20
August	174.69	60	104.81
September	180.85	62	112.13
October	157.19	62	97.46
November	162.20	62	100.56
December	158.22	62	98.10

2,171.02

1,209.50

1912

January	168.48	69	116.25
February	169.57	72	122.09
March	164.10	72	118.15
April	139.03	75	104.27
May	163.43	77	125.84
June	166.79	77	128.43
July	150.19	80	120.15
August	166.37	80	133.10
September	139.23	80	111.38
78 October	165.05	80	132.04
November	111.91	83	92.89
December	173.04	91	157.47

1,877.19

1,462.06

1913

January	151.47	93c.	140.87
February	152.65	98	149.60

107

March	165.96	98	162.64
April	156.74	98	153.61
May	165.44	98	162.13
June	135.31	98	132.60
July	136.29	1.00	136.29
August	146.63	1.05	153.96
September	97.00	1.05	101.85
October	138.90	1.05	145.85
November	144.90	1.05	152.15
December	145.97	1.05	153.27

1,737.26

1,744.82

1914

January	152.97	1.05	160.62
February	128.66	1.05	135.09
March	151.80	1.05	159.39
April	136.51	1.05	143.34
May	105.35	1.05	110.62
June	110.92	1.05	116.47
July	121.18	1.00	121.18
August	130.29	85	110.75
September	118.33	80	94.66
October	126.43	80	101.14
November	118.70	80	94.96
December	107.16	80	85.73

1,508.30

1,433.95

1915

January	126.39	80	101.11
February			
March	202.43	70-60	130.42
April	94.69	60	57.45
May	107.56	60	64.54

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June	101.09	60	60.65
July	113.61	60	68.17
August	102.22	65	66.44
September	98.78	75	74.09
October	103.17	80	82.54
November	100.13	1.00	100.13
December	93.33	1.20	112.00
	<hr/> 1,243.40		<hr/> 917.54

1916

January	99.20	1.30	128.96
February	85.42	1.30	111.05
March	82.69	1.45	119.90
April	117.47	1.55	182.08
May	65.10	1.55	100.91
June	102.28	1.55	158.53
July	99.27	1.55-1.45	150.97
August	96.86	1.14-95-80	97.47
September	93.94	.90	84.55
October	92.03	90	82.83
November	92.93	90	83.64
December	102.55	1.00-1.20-1.40	122.24
	<hr/> 1,129.74		<hr/> 1,423.13

79 1917

January	101.28	1.60-1.70	168.67
February	85.13	1.70	144.72
March	61.62	1.80-1.90	114.51
April	101.81	1.90	193.44
May	105.16	1.90	199.80
June	66.95	1.90	127.21
July	81.87	1.90	155.55
August	28.43	1.90	54.02

August	54.67	2.00	109.34
September	91.66	2.00	183.32
October	31.53	2.00	63.06
November
December
	<hr/> 810.11		<hr/> 1,513.64

Grand Total	18,179.05	\$13,671.05
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Pipage Earnings on 7,002.70		
bbls. at 5c. per bbl.		350.14
Pipage Earnings on 11,176.35		
bbls. at 10c. per bbl. ...		1,117.64
		<hr/> \$15,138.83

Statement Showing Cost of Drilling and Equipping and
Operating Norvell No. 1 Caddo Parish, Louisiana,
to December 31, 1917.

Commenced drilling December 26, 1908	Completed
March 25, 1909.	

Expenditure.

Drilling and equipping Well No. 1	12,980.06	
Operating expense to December 31,		
1917	15,018.04	
	<hr/>	
Total Outlay		27,998.10

Oil Production.

18,179.05 Bbls. at various prices, plus pipage earnings	15,138.83	15,138.83
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Balance to pay out Decem- ber 31, 1917		\$12,859.27
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Total Pipe Line Runs Divided and Paid for as Follows:

	Barrels	Value
B. R. Norvell	756.48	444.33
C. H. Stoeck	756.48	444.33
Lee Blanchette	756.48	444.33
A. E. Weaver	756.48	444.33
C. M. Smelker	756.48	444.33
P. H. Millard	756.48	444.33
A. S. Denman	1,512.95	888.64
Gulf Refg. Co. of La.	12,127.22	10,116.43
	<u>18,179.05</u>	<u>13,671.05</u>

4 April 17 1918 5.

80 Gulf Refining Company of Louisiana.

Statement Showing Total Production from Norvell Well
No. 2 Caddo Parish, Louisiana.

1909	Barrels	Price	Amount
April	583.30	50	291.65
May	494.18	50	247.09
June	485.37	55	266.95
July	154.68	55	85.07
	<u>1,717.53</u>		<u>\$890.76</u>

Plus Pipage Earnings on 1717.53
Bbls. at 5c. per bbl.

85.88

\$976.64

Cost of Drilling and Equipping

No. 2 11,069.62

Operating Expense 2,456.78

Total Outlay

13,526.40

Balance paid out

12,549.76

Divided and Paid for as Follows:

	Barrels	Amount
B. R. Norvell	107.35	55.67
Chas. H. Stroeck	107.35	55.67
Lee Blanchette	107.35	55.67
A. E. Weaver	107.35	55.67
C. M. Smelker	107.34	55.67
Paul H. Millard	107.34	55.67
A. S. Denman	214.69	111.36
G. R. Co. of La.	858.76	445.38
	<hr/> 1,717.53	<hr/> 890.76

Commenced Drilling January 8, 1909.
March 28, 1909.

Completed

4, March 21, 1918, 5.

Plaintiff A. Filed Jan. 21, 1919.
B.

81 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,

vs. No. 1167, in Equity.

B. R. Norvell, et al., Defendant.

To B. R. Norvell, a Resident of the City of Beaumont, in
the Eastern District of Texas.

In accordance with Rule 38 of the Equity Rules, plaintiff hereby calls upon you to admit in writing, within five days after service hereof, the execution of a certain affidavit sworn to and subscribed by you before D. R. Thompson, a Mineral Inspector of the General Land Office, on May 22, 1916, at Beaumont, Texas, a copy of which affidavit is hereto annexed and made by reference a part of this demand.

This February 15th, 1918.

ROBERT A. HUNTER,

Special Assistant to the Attorney
General, Attorney for Plaintiff.

Service accepted, this Feb. 16th, 1918.

THIGPEN & HEROLD,

Solicitors for Defts.

Copy.

State of Texas,

County of

B. H. NORVELL, a citizen, deposes and says:

My residence and post office address are Beaumont, Texas. I am president of the American National Bank of Beaumont.

Q. Are you one of eight locators who made a location of 160 acres in the Caddo oil field, known as the Norvell tract?

A. Yes.

Q. What were the circumstances of the filing of this location, and how was it made?

A. It was made by myself and seven others in the American National Bank at the request of C. H. Bachman, then at the head of the Gaffey interests.

Q. Do you recall what Mr. Bachman said?

A. He told me that if we would locate on the claim he would give us \$500.00 each, for the claim.

Q. Did he carry out this agreement?

A. Yes, and the papers were executed. Each of us received \$500.00.

Q. Did you ever claim the claim?

A. Yes.

Q. Were you there at the time of location?

A. No.

Q. Were any of the other locators present at the time of location that you know of.

A. No, sir.

Q. You never received any royalty from the sale of oil?

A. Yes, that is the way we received our money. The \$500. was paid monthly as the oil was produced. The locators received $\frac{1}{4}$ of the production until each had re-

1
1
3

ceived \$500. The dates between which the royalties were paid were March, 1911, to May, 1914.

Q. At the time of location in 1908 did you know W. W. Bell?

A. I knew him. I know him more intimately now.

Q. Who secured the names of the locators besides yourself?

A. I did.

Q. Are or were they bank employees?

A. Yes, sir. They were.

(Signed) B. R. NORVELL.

Subscribed and sworn to before me at Beaumont, Texas, this 22 day of May, 1916.

(Signed) D. R. THOMPSON,
Mineral Inspector, G. L. O.

Indorsed:—Demand by Plaintiff on B. R. Norvell for Admission of Execution of Affidavit. Filed Feb. 18, 1918.

Beaumont, Texas, February 21st, 1918.

In accordance with the above notice and demand, I hereby admit in writing that I executed a certain affidavit, sworn to and subscribed by me before D. R. Thompson, a Mineral Inspector of the General Land Office, on May 22, 1916, at Beaumont, Texas, a copy of which affidavit is hereto annexed and made by reference a part of this admission.

Witness my hand at Beaumont, Texas, this the 21st day of February, A. D. 1918.

B. R. NORVELL.

Ptff Ex. R. B. Cook, Stenographer.

83 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1167, In Equity.
B. R. Norvell, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exceptions shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

2.

That the Master refused to allow the expenditures incurred in the production of oil on said property as offsets against the total amount of oil produced; whereas same should be allowed, thereby eliminating this defendant from any liability.

3.

That the Master has certified that this defendant should be held liability in solido with its co-defendants for the \$4,000.00 paid as royalty to the locators; whereas the Master should have certified that there was no liability whatever by this defendant in favor of the Government.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant, Gulf Re-
fining Company of Louisiana.

Indorsed:—Exception of the Gulf Refining Company
of Louisiana to the Report of the Special Mas-
84 ter. Filed Jan. 30, 1919.

85 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1167 In Equity.

B. R. Norvell, et al., Defendants.

Now come B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman and A. Wildenthal, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

That the Master in said report certified that these defendants should be held liable for amounts received by them from the Gulf Refining Company of Louisiana; whereas he should have reported and certified that they were not so liable to the plaintiff.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—Exceptions of B. R. Norvell, Chas. H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal to the Report of the Special Master. Filed Jan. 30, 1919.

86 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

vs.

No. 1167.

B. R. Norvell, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F-1, 2, 3, 4, 5." "G" "H" "I" "J" "L" "M" "N" "O" "P" "Q" "R" "S" "T", which said exhibits were by agreement of counsel made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 20 N., Range 15 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

87 2. The mineral location in this cause was made December 22, 1908, and embraced 160 acres of land described as the West $\frac{1}{2}$ of SE $\frac{1}{4}$, and South $\frac{1}{2}$ of NE $\frac{1}{4}$, Sec. 31, T. 20 N., R. 15 West, (answer of defendants to the bill of complaint, and answers of D. Edw. Greer, on behalf of the Gulf Refining Co. of Louisiana, and B. R. Norvell to interrogatories propounded). Defendants in their answer to the bill of complaint (paragraph 5 of answer), and in their answers to the interrogatories propounded to them by plaintiff, admitted that no work had been done upon the land embraced in said

mineral location until December 26, 1908, after said location was made and after the withdrawal of December 15, 1908.

Plaintiff avers that the drilling of said wells and the removal of oil from said land were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. The defendants made said mineral location and drilled said wells with full knowledge of the issuance of the withdrawal order of December 15, 1908 (see answer of D. Edw. Greer on behalf of the Gulf Refining Co. of Louisiana to interrogatory No. 1). Having acted with full knowledge of the facts, the advice of counsel cannot protect defendants.

5. That the said mineral location was not only null and void as having been made after, and in violation of, the withdrawal order of December 15, 1908, but was fraudulent in this, to-wit:

That the said pretended mineral locators, as alleged in the bill of complaint, allowed the use of their names by W. W. Bell, at the request of C. H. Markham, a representative of the Gulf Refining Co. of Louisiana, for the use and benefit of the said Gulf Refining Company of Louisiana, for the purpose, and with the intent, of securing for said Gulf Refining Company of Louisiana a mineral location of an area of land to which it was not entitled under the law, said pretended

mineral location being made for the use and benefit of a concealed party, viz: The Gulf Refining Company of Louisiana, and was, and is, a fraud upon the United States.

That the laws of the United States prohibit the location of more than 20 acres by one individual (Sec. 2331, Revised Statutes). The said mineral location embraced 160 acres. The said Gulf Refining Company of Louisiana was, and is, a corporation, and could not make a location in its own name, but secured the making of such location with the express understanding and agreement that it would lease the entire tract from said locators. Said agreement was made before the filing of the location and was carried out by the execution of a lease from said locators to the Gulf Refining Co. of Louisiana immediately after said location was made.

That no oral testimony was taken before the Master on this issue; the evidence relating thereto consisting of answers of the defendants to interrogatories propounded to them by plaintiff under equity Rule 58, all of which interrogatories and the answers thereto were offered in evidence by plaintiff and form a part of the record made up in the hearing before the Master.

That the allegations of the bill of complaint were fully established by the admissions of defendants in their answers to said interrogatories, and particularly by the following testimony:

At the date of the said mineral location, B. R. Norvell was the President, and the other locators were employes, of the American National Bank of Beaumont, Texas.

At the time of said mineral location, C. H. Markham was the General Manager of the Gulf Refining Company of Louisiana.

89 At the time of said mineral location W. W. Bell was an employe of the Gulf Refining Company of Louisiana, and was then engaged in buying lands and securing leases for the Gulf Refining Company of Louisiana in Caddo Parish and Northern Louisiana generally, and the location was made by said Bell under powers of attorney from said locators.

The said mineral location was made at the suggestion and request of C. H. Markham, who had been advised that the said Gulf Refining Company of Louisiana could make a location on twenty acres only, and had been further advised not to have said location of the property in controversy made by employes of said company.

The said land was located, staked and surveyed by said W. W. Bell, who, likewise, filed the notice of mineral location.

On the day the location was made, the mineral locators leased said land to the Gulf Refining Company of Louisiana, who undertook to develop the land for oil, and agreed to pay the locators one-half of the production until the proceeds should amount to \$4000.00. The lease so taken was not recorded.

The mineral locators did not see, or go upon, the land until after the location, and did not, themselves, develop or explore the same.

The mineral location was made with the antecedent understanding between the Gulf Refining Company of Louisiana and the mineral locators that the said property would be leased to the Gulf Refining Company of Louisiana, which lease was executed contemporaneously with said location.

After the payment of said \$4000.00 to the locators, the said Company ceased paying royalties and converted the production of said well to its own use and benefit.

The facts aforesaid are shown by the answers of the Gulf Refining Company of Louisiana, and of the mineral locators, to the interrogatories, and particularly by the following:

Answers of Gulf Refining Company of Louisiana to Interrogatories 1, 17, 50 and 51.

Answers of B. R. Norvell to interrogatories 1 and 6.

Plaintiff avers that the facts shown by the record herein prove the fraudulent nature of the mineral location herein made, and that the Master erred in not holding said location to be fraudulent as well as void.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

- (a) Against the Gulf Refining Company of Louisiana for the full value of the oil extracted and removed from said land, less royalties paid of \$4,000.00 all as shown by the Master's report, aggregating \$10,561.81
- (b) Against the Gulf Refining Co. of Louisiana, and the several royalty claimants of said Gulf Refining Company of Louisiana, in solido with said company for the amount paid to each of them, as shown by the Master's report (except Lee Blanchett, who is not a party to the suit), all as shown by the Master's report, aggregating \$3500.00

(c) Against the Gulf Refining Company of Louisiana in the further sum of \$500.00, being amount of royalty, as shown by the Master's report, paid to said Blanchett by the Gulf Refining Co. of Louisiana	\$500.00
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Aggregating, as shown by Master's report	\$14,562.81
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That said mineral location, in addition to being declared null on account of the fact that it was made in violation of the withdrawal order, as recommended by the Master, be also adjudged and decreed to be fraudulent and void.

91 Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

92 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

B. R. Norvell, et al.

No. 1167.

In order to make the record complete in this suit, counsel for plaintiff and defendants agree as follows:

That all the documentary evidence offered by plaintiff on trial before the Court of the special pleas filed by defendants in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court of the Western District of Louisiana, consisting of plaintiff's exhibits "A" "B" "C" "D" "E" "F" (1, 2, 3, 4, 5)" "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", shall be considered as a part of the record in the present cause, and need not be offered by either party in this suit. For the purpose of appeal copies of said exhibits shall be incorporated in the transcript.

This agreement is made because the stenographer's note of evidence does not show the offering in the present suit of said exhibits, although said exhibits were considered in the hearing before the Master in Chancery, as being a part of the record herein.

Thus done and signed this 29 day of January, 1919.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

THIGPEN & HEROLD,
Attorneys for defendants.

Indorsed:—Agreement of Counsel. Filed Jan. 30. 1919.

93 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America,

vs.

No. 1167 In Equity.

B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R.
Millard, A. S. Denman, A. Wildenthal, Gulf Refin-
ing Company of Louisiana, A. E. Weaver.

This cause came on to be heard at this term and was
argued by counsel; and thereupon, upon consideration
thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by
E. H. Randolph, Special Master in Chancery, be and the
same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint,
namely, South Half ($S\frac{1}{2}$) of the Northeast Quarter
($NE\frac{1}{4}$), and the West Half ($W\frac{1}{2}$) of the Southeast
($SE\frac{1}{4}$), of Section Thirty-one (31) Township Twenty
(20) North, Range Fifteen (15) West, Louisiana Merid-
ian, Louisiana, situated in the Parish of Caddo, Western
District of Louisiana, containing one hundred and sixty
(160) acres, be and the same is hereby decreed to have
been at all times from and after December 15, 1908, law-
fully withdrawn from settlement, entry, location, sale
or other form of appropriation under the public land or
mineral laws of the United States.

III. That the mineral location made December 22,
1908, by defendants, B. R. Norvell, Charles H. Strouck,
A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Den-
man and A. Wildenthal, recorded December 24, 1908, in

Book 51, page 365, of the records of the Parish of Caddo, State of Louisiana, and the lease of said land by said locators to the Gulf Refining Company of Louisiana, be and the same are declared null and void and shall be cancelled.

94 IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of said land shall be restored to plaintiff.

V. That the said defendants, namely, B. R. Norvell, A. E. Weaver, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue, restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and B. R. Norvell, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and Charles H. Strouck, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and A. E. Weaver, in solido, and the said
95 defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and C. M. Smilker, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana and P. R. Millard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of five hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of and from the Gulf Refining Company of Lou-

isiana and A. S. Denman, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and no/100 (\$1,000.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of and from the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and no/100 (\$500.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the rights of plaintiff, if any, to recover from Lee Blanchett, not a party to the suit, amount of royalty paid to said Blanchett, be reserved, in accordance with recommendation set forth in the Master's report.

XIV. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XV. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XVI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreve-

port, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Twenty Five Hundred (\$2500.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said Receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States

of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed:—Decree. Filed Aug. 12, 1919.

B

98 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1167 In Equity.
B. R. Norvell, et al., Defendants.

The petition of all the defendants in the above entitled and numbered cause represents:

1.

That they have been aggrieved by the decree rendered by Your Honor and signed on the day of August, 1919, wherein they are condemned in solido to pay to the plaintiff the sum of Thirty-five Hundred (\$3,500.00) Dol-

lars, and the Gulf Refining Company of Louisiana, defendant herein, in the further sum of Five Hundred (\$500.00) Dollars, with five (5%) percent per annum thereon from January 11th, 1919; and avers that error has been committed in the rendering of the said decree in this, to-wit:

2.

That the Court erred in confirming the report of the Master, which recommended a judgment against all of the defendants in solido in the said sum of \$3,500.00 and against the Gulf Refining Company of Louisiana in the said further sum of \$500.00, when according to the uncontradicted testimony of the witness of the Government and according to the Master's report itself, there was produced from the property in dispute oil to the value of Fourteen Thousand Five Hundred and Sixty-one and 81/100 (\$14,561.81) Dollars, at a cost of production of Forty-one Thousand, Five Hundred and Twenty-four and 50/100 (\$41,524.50) Dollars; so that a loss was entailed in the operation of the property and no damage whatever caused to the Government.

Wherefore, petitioners pray for a rehearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

99

THIGPEN & HEROLD,
Solicitors for Defendant.

ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

August 4th, 1919.

RUFUS E. FOSTER,
United States District Judge.

Indorsed:—Petition for Rehearing. Filed August 13, 1919.

100 714.

Chancery Order Book. Vol. 5.

United States District Court for the Western District
of Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,

vs. No. 1167 In Equity.

B. R. Norvell, et al.

In this cause the Motion for Rehearing which was heretofore filed, came on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. I. Herold, after argument and consideration by the Court,

It is ordered, that this Motion be overruled.

101 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

vs. No. 1167 In Equity.

B. R. Norvell, et al.

To the Honorable, the Judge of the District Court of the
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States
of America, plaintiff in the above numbered and entitled
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final de-
cree in said cause, and that in said decree there was, in
part, error, greatly to the prejudice and injury of plain-
tiff, as will more fully appear by the assignment of er-
rors filed herewith. Plaintiff desires to take an appeal
from said decree to the United States Circuit Court of
Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed
to plaintiff in this cause from this Court to the United
States Circuit Court of Appeals for the Fifth Circuit,
and that proper orders for the allowance of such appeal
may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attor-
ney General.

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,

United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S APPEAL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1167, In Equity.

B. R. Norvell, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order was issued for the purpose of conserving the public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court further erred in allowing said counterclaim and in not entering a decree in favor of plaintiff for the

full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knoweldge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

IV.

The Court erred in allowing said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil. The mineral location was made for the use and benefit of a concealed party, viz: Gulf Refining Company of Louisiana, to enable said Company to acquire an area of land in excess of the amount allowed by law, and was, therefore, a fraud upon the United States.

V.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in
 104 suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of said oil, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed :—Plaintiff's Petition for Appeal, Order Allowing Same, and Assignment of Errors. Filed Jan. 3, 1920.

105 In the District Court of the United States, for
 the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1167, In Equity.

B. R. Norvell, et al., Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

The defendants in the above entitled and numbered cause, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on December 4, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers

on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

THIGPEN & HEROLD,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Six thousand dollars.

RUFUS E. FOSTER,
United States District Judge.

Jan. 10th, 1920.

Indorsed:—Motion and Order for Appeal. Filed Jan. 12, 1920.
B.

SUPERSEDEAS BOND ON APPEAL.

106 In the District Court of the United States, for
 the Western District of Louisiana.

United States of America, Plaintiff,
 vs. No. 1167, In Equity.
 B. R. Norvell, et al., Defendants.

Know all men by these presents: That we, B. R. Norwell, A. E. Weaver, Chas. H. Stronck, C. M. Smither, P. R. Millard, R. S. Denman, A. Wildenthal, and Gulf Refining Co. of La., as principal, and the Company, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Six Thousand Dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and B. R. Norvell, et al., were defendants, numbered on the Equity docket 1167, a decree was rendered and signed against the said B. R. Norvell, et al., and a rehearing thereof refused on December 4th, 1919, and the said B. R. Norvell, et al., having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, if the said above named appellants shall prosecute such appeal to effect and answer all damages and costs if they fail to make thir pleas good, then the above obligation to be void; otherwise to remain in
 107 full force and effect.

B. R. NORVELL,
 By S. L. HEROLD, Atty.

A. E. WEAVER,
 By S. L. HEROLD, Atty.

CHAS. H. STROUCK,
 By S. L. HEROLD, Atty.

C. M. SMILKER,
 By S. L. HEROLD, Atty.

P. R. MILLARD,
 By S. L. HEROLD, Atty.

A. S. DENMAN,
 By S. L. HEROLD, Atty.

A. WILDENTHAL,
 By S. L. HEROLD, Atty.

GULF REFINING CO. OF LA.,
 By S. L. HEROLD, Atty.

(Seal)

AMERICAN SURETY CO. OF
 NEW YORK,

By R. L. GAFFNEY, Atty. in fact.

By J. C. TRICHEL.

Approved:

RUFUS E. FOSTER, Judge.

Indorsed:—Supersedeas Bond. Filed Jan. 12, 1920.
 B.

108 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiffs,
vs. No. 1167, In Equity.
B. R. Norvell, et al., Defendants.

And now, on this the 10th day of January, 1920, come all of the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of rehearing thereof on the 4th day of Dec., 1919, is erroneous and unjust to the defendants; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including township 20 North, Range 15 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, December 24, 1908), the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

109

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant, Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.

Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.
B.

110 STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1167.

B. R. Norvell, et al.

Counsel for plaintiff and defendant do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, the record on appeal in the cause entitled United States v. Sam W. Mason, et al., No. 1172, on the

docket of the United States District Court for the Western District of Louisiana, contains and includes certain exhibits, the Master's Report, and the opinion of the Court in full, which exhibits, report and opinion are applicable to this cause; and

Whereas, the said suit above mentioned has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and counsel have agreed to incorporate in the transcript in the present cause only the pleadings, exhibits, testimony and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

111 To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in the mineral location, copied into the bill of complaint, made and filed upon the date set forth in said bill of complaint by defendants, Strouck, Weaver, Smilker, Millard, Norvell, Denman and Wildenthal, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Answer of all defendants.
3. Plaintiff's reply to set off and counterclaim.
4. Interrogatories propounded to defendants.
5. Answers of all defendants to interrogatories.
6. Order appointing E. H. Randolph Special Master in Chancery.
7. Note of evidence taken by the Master in Chancery in this cause.
8. Statement of James W. Neal, Special Agent of the General Land Office, marked Plaintiff A, showing quantity and value of oil produced, costs of drilling and operating, together with all other information given in said statement.
9. Affidavit of B. R. Norvell before D. R. Thompson, Mineral Inspector, notice to admit execution of said affidavit and admission of such execution.
10. Exceptions of Gulf Refining Company of Louisiana to Master's report.
11. Exceptions of B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, and A. Wildenthal, to Masters' report.
12. Plaintiff's exceptions to Master's report.

13. Agreement of counsel

112 14. Final decree

15. Defendants' petition for rehearing.

16. Order of Court overruling petition for rehearing.

17. Plaintiff's petition for appeal, order allowing same, and assignment of errors.

18. Defendants' petition for appeal, ordering allowing same, supersedeas bond and assignment of errors

19. This stipulation.

Thus done and signed this 13 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one hundred twelve pages contain and form a full, true, correct and complete transcript of the record, assignment of errors, and all proceedings had in a cause wherein The United States of America is plaintiff and B. R. Norvell, et al., are defendants, No. 1167 In Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana,—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the Seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk, U. S. District Court, for the Western District of Louisiana.

Citations omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3544.

B. R. NORVELL et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,

versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western
District of Louisiana.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3544.

B. R. NORVELL et als.

versus

THE UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said de-

creed was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

(Signed)

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Appellants.

Order.

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Twenty-one Thousand Eight Hundred Dollars (\$21,800.00).

June 7, 1921.

(Signed)

R. W. WALKER,
Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount paid by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in not reversing the judgment of the District Court which had condemned defendants in solido in a sum greater than the difference between the value of the oil extracted from the property and the actual cost incurred, as found by the Master and the District Court, of the production of such oil.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for Defendants.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3544.

B. R. NORVELL, CHARLES H. STROUCK, C. M. SMILKER, P. R. MILLARD, A. S. Denman, A. Wildenthal, A. E. Weaver, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wilden-

thal, A. E. Weaver and the Gulf Refining Company of Louisiana, as principals, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of Twenty-one Thousand Eight Hundred (\$21,800.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver, and Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3544, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said B. R. Norvell, Charles H. Strouck, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal, A. E. Weaver, and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) B. R. NORVELL,

By S. L. HEROLD,
Atty.

(Signed) CHARLES H. STROUCK,

By S. L. HEROLD,
Atty.

(Signed) C. M. SMILKER,

By S. L. HEROLD,
Atty.

(Signed) P. R. MILLARD,

By S. L. HEROLD,
Atty.

(Signed) A. S. DENMAN,

By S. L. HEROLD,
Atty.

(Signed) A. WILDENTHAL,
By S. L. HEROLD,
Atty.

(Signed) A. E. WEAVER,
By S. L. HEROLD,
Atty.

(Signed) GULF REFINING COMPANY OF LA.,
By S. L. HEROLD,
Atty.

(Signed) AMERICAN SURETY COMPANY OF
NEW YORK,
By CHAS. HOFFMAN,
Resident Vice-President.

Attest:

(Signed) C. MURPHY,
[SEAL.] *Resident Assistant Secretary.*

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 148 to 157 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3544, wherein B. R. Norvell and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 147, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein B. R. Norvell, Charles H. Strouck, A. E. Weaver, C. M. Smilker, P. R. Millard, A. S. Denman, A. Wildenthal and Gulf Refining Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3544 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said B. R. Norvell and others, as in said petition and order for appeal, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

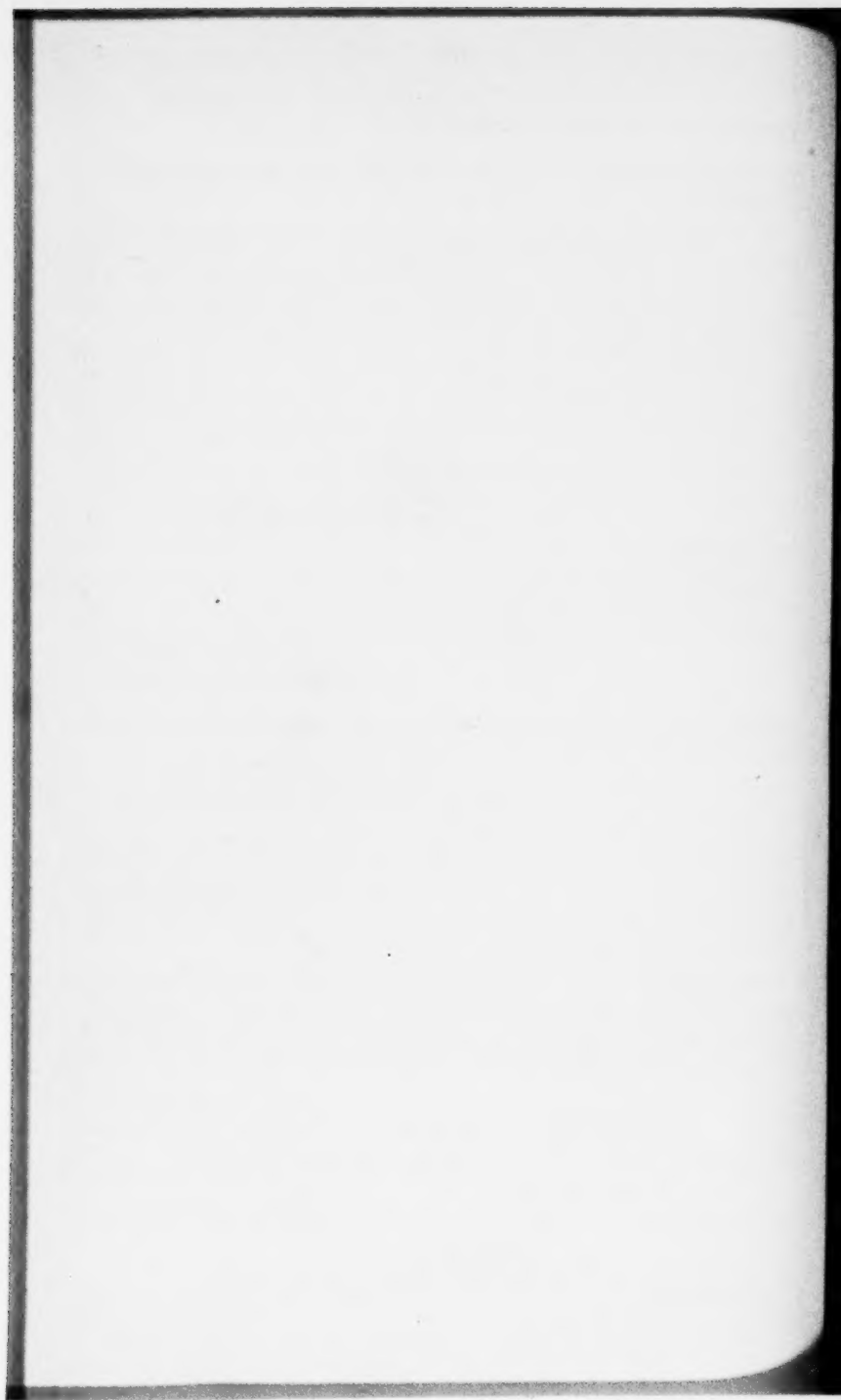
Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

[Endorsed:] No. 3544. United States Circuit Court of Appeals, Fifth Circuit. B. R. Norvell et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,350. U. S. Circuit Court Appeals, 5th Circuit. Term No. 395. B. R. Norvell, Charles H. Strouck, A. E. Weaver, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,350.

(4276)



TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1922

No. 114

W. H. MATTHEWS, LYDIA HANSEN MACMULLEN, & A.
MACMULLEN, ET AL., APPELLANTS.

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JULY 2, 1921.

(28,351)

(28,351)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 396.

W. H. MATTHEWS, LYDIA HANSZEN MacMULLEN, J. A.
MacMULLEN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

W. H. MATTHEWS, LYDIA HANSZEN McMULLEN, J. A. McMULLEN, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3545, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,
Plaintiff,
versus No. 1168 In Equity

W. H. MATTHEWS, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants and Cross Appeal taken by the
Plaintiff, to the United States Circuit Court of Ap-
peals, Fifth Circuit, New Orleans, Louisiana.

1 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A.
McMullen, F. A. Leonard, Sam W. Mason, H. Earl
Barnes, Dillard P. Eubank, Natalie Oil Company,
Pure Oil Operating Company, Gulf Refining Company
of Louisiana, Standard Oil Company of Louisiana,
Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert
A. Hunter, Special Assistant to the Attorney General.
acting herein under the direction and by the authority

of the Attorney General of the United States, brings this bill of complaint against the following defendants:

W. H. Matthews, a citizen of Louisiana and a resident of the City of Shreveport in the Western District of said State, Shreveport Division;

Mrs. Lydia Hanszen McMullen, a citizen of the State of Nevada, and a resident of the town of Carson City, said State;

J. A. McMullen, husband of the said Mrs. Lydia Hanszen McMullen, a non-resident of the state, whose residence is unknown to plaintiff;

F. A. Leonard, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Sam W. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

H. Earl Barnes, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

Natalie Oil Company, a corporation organized under the laws of Louisiana, and domiciled and doing business in the City of Shreveport, in the Western District of said State, Shreveport Division;

2 The Pure Oil Operating Company, a corporation organized under the laws of the State of West Virginia and domiciled in the City of Pittsburgh, in the State of Pennsylvania, and doing business in the Western District of Louisiana, with L. C. Blanchard of Shreveport, Louisiana, as its duly authorized agent for the service of process;

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and the

Standard Oil Company of Louisiana, a corporation organized under the laws of Louisiana, and domiciled in the City of Baton Rouge, Eastern District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number Six (6), Section Ten (10), Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing Thirty-one and sixty-seven hundredths (31.67) acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of

the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President
 3 of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public Lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and

contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill four wells known as Pure Oil Operating Company's Hanszen Nos. 2, 3, 4 and 5, and from three of said wells did withdraw large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes, that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of an illegal mineral location made by defendants Lydia Hanszen McMullen (then Lydia Hanszen) and W. H. Matthews, pretending to act under the placer mining laws of the United States, which pretended location was recorded April 28, 1910, in Book 59, page 369, of the Conveyance Records of Caddo Parish, Louisiana.

That said pretended mineral location embraced thirty-seven and fifty-eight (37.58) hundredths acres, including the land herein involved, and which location is in words and figures as follows, to-wit:

Notice of Mining Location.

L. Hanszen, et al
to
The Public.

To all whom it may concern:

Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, having complied with the requirements of Chapter VI, title 32 of the Revised Statutes of the United States, and the local laws, rules and regulations and under authority of the Act of Congress of February 11, 1897, relating to the location of land containing petroleum, oil or other mineral oils under placer mining laws, the undersigned have located and caused a survey to be made, and have taken possession of 37.58 acres of land, described as follows, lying in Caddo Parish, Louisiana, to-wit:

Beginning at a point 24 chs. east of the NW corner Sec. 10 T 20 N. R. 16 W., thence S 20 degrees W. 10 chs.; thence S. 43 degrees E. 20 chs.; to stake at traverse corner which is the beginning of the tract herein located; thence S. 60 degrees W. 8.5 chs.; thence S. 5 chs.; thence S. 45 degrees E. 10 chs.; thence S. 40 degrees W. 1.62 chs.; thence West 34.56 chs. to a stake on traverse line; thence North 30 degrees E. 13.08 chs. along traverse line; thence N. 78 degrees E. along traverse line 30 chs. more or less, to place of beginning, containing 37.58 acres, more or less, and have set stakes at each corner thereof.

Witness our hands this 24th day of April, 1910.

(Signed) L. HANSZEN,
W. H. MATTHEWS, Locators.

Attest:

SAM W. MASON,
H. EARL BARNES.

The said above pretended locators themselves made no effort to explore said land, or drill for oil or gas, but on April 30, 1910, by act recorded in Conveyance Book 59, page 387, executed a mineral lease thereon to E. H. Jennings, who on January 6, 1911, by act recorded in Conveyance Book 66, page 665, transferred said lease to the defendant, Pure Oil Operating Company, said instruments having been recorded in the Office of the Clerk and Recorder of Caddo Parish, Louisiana.

That after said lease from said locators, Lydia Hanszen and W. H. Matthews to E. H. Jennings, defendants, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and Natalie Oil Company acquired an interest in the royalty to be paid said locators, Lydia Hanszen and W. H. Matthews.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and leases, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, the said Pure Oil Operating Company, defendant herein, entered upon the said tract of land, drilled wells thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which it marketed and sold to the Gulf Refining Company of Louisiana, and to the Standard Oil Company of Louisiana,

defendants herein; that the said Pure Oil Operating Company received the price of the oil and gas so produced, marketed and sold by it, and paid a royalty therefrom to the above-named locators, Lydia Hanszen McMullen and W. H. Matthews, and likewise to Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company, defendants herein, the amount of which is the the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the defendants is sought.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Sixty-eight Thousand (\$68,000.00) Dollars, and that all of
 6 defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the said pretended mineral location recorded April 28, 1910, in Conveyance Book 59, page 369, made by defendants Lydia Hanszen McMullen (then Lydia Hanszen) and W. H. Matthews, the lease thereof, made by the said Lydia Hanszen and W. H. Matthews to E. H. Jennings, on April 30, 1910, by act recorded in Conveyance Book 59, page 387, and the transfer of said lease by the said E. H. Jennings to the Pure Oil Operating Company on January 6, 1911, by act recorded in Conveyance Book 66, page 665, of the records of the Parish of Caddo, Louisiana, as well as the transfers of royalty interests to the defendants, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company, all as above set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, (used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to the Pure Oil Operating Company, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, W. H. Matthews and the Natalie Oil Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such orders, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the following
 8 defendants, not inhabitants of or now within this district, to-wit: Mrs. Lydia Hanszen McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

And may it further please the Court, that an order be granted and entered directed to J. A. McMullen, defendant herein, directing said defendant to appear and answer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

C. W. CALHEATT,
Deputy Clerk U. S. District Court
Northern District of California.

(Seal)

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana are not inhabitants of the Western District of Louisiana and are domiciled outside of said district.

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for the period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that copies of this order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 2, 1917.

10 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A.
McMullen, F. A. Leonard, Sam W. Mason, H. Earl
Barnes, Dillard P. Eubank, Natalie Oil Company,
Pure Oil Operating Company, Gulf Refining Company
of Louisiana, Standard Oil Company of Louisiana, De-
fendants.

Now comes the Gulf Refining Company of Louisiana,
one of the defendants in the above cause, and moves the
Court to dismiss the bill filed in this case because said
bill does not state any matter of equity entitling plaintiff
to the relief prayed for, nor are the facts as stated suffi-
cient to entitle plaintiff to any relief against this de-
fendant.

Wherefore, defendant prays that this motion be sus-
tained, the bill be dismissed as against this defendant,
and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,
Solicitor for Defendant, Gulf Re-
fining Company of Louisiana.

Indorsed:—Motion to Dismiss on Part of Gulf Refin-
ing Company of Louisiana. Filed Aug. 18, 1917.

B.

- 11 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs.

No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

The defendants, W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, Natalie Oil Company and Pure Oil Operating Company, answer the bill of complaint herein brought against them as follows: (Natalie Oil Company appearing through its liquidators, J. A. Thigpen & S. L. Herold, said corporation having been dissolved):

I.

The ownership by the United States, on and before December 15th, 1908, of the tract of land referred to in Article I of the bill of complaint is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

II

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of

the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that

the last order specially excepted from its force
12 and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the minerals laws of the United States.

III

Your defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the wells referred to in the bill of complaint, from which wells oil has been produced and sold, as hereinafter is fully set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, or to the injury of plaintiff.

IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants except the Natalie Oil Company (which acquired later by purchase from H. Earl Barnes) were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article One of the bill, and that under said location your defendants were in possession of said land, as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order.

V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Miss Lydia Hansen (now Mrs. Lydia H. McMullen) and W. H. Matthews; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location, evidenced by the notice of location set out in this article of the bill of complaint, was a legal and
 13 valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Your defendants admit the execution of lease by said locators to E. H. Jennings (which said lease was taken for account of the Pure Oil Operating Company) and the assignment of said lease to the Pure Oil Operating Company, as recorded in Conveyance Book 66, page 665, of the records of Caddo Parish, Louisiana, and show that under said lease, lawfully made and entered into, said E. H. Jennings (for account of the Pure Oil Operating

Company) proceeded in good faith and according to the terms of said lease to drill upon said location, commencing such effort on June 21st, 1910, and completing same with the discovery of oil in paying quantities by the bringing in of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through wells drilled, as aforesaid, under said mineral location, a large quantity of oil, which, after delivery to the mineral locators of their proportion as royalty, as provided in said lease, the Pure Oil Operating Company has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order, and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, at

which said date and prior thereto, said mineral locators were in the actual possession of said land as bona fide occupants thereof in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact subsequently made through such work) and that as such, all the rights of said locators were specially saved and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910; all of which defendants allege to be true and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

IX.

In event they be required to answer further, then your defendants would show that in its operations on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom up to the 31st day of July, 1917, seventy-seven thousand six hundred and five & 17/100 (77,605.17) barrels of oil of the market value of Sixty-eight Thousand Five Hundred and Sixty-four & 62/100 (\$68,564.62) Dollars; one-eighth whereof, or nine thousand seven hundred & 65/100 (9,700.65) barrels of oil of the market value of Eight Thousand Five Hundred Seventy & 57/100 (\$8,570.57) Dollars was delivered to said locators under the stipulations of the lease, and the remainder retained by said Pure Oil Operating Company for its own use as owner, all of which it had the right to do.

X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the minings laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Pure Oil Operating Company, likewise, before acquiring said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of Miss Lydia Hanszen and W. H. Matthews was validly made upon land subject to location under the placer minings laws of the United States, and relying upon the advice of counsel so given, acquired said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

XI.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said wells were drilled in good faith and under such belief of right.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for any oil extracted therefrom; the cost of drilling, equipping and operating said wells will be set out later by an amendment to be filed to this answer.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Pure Oil Operating Company may be adjudged not liable to the plaintiff on such
16 account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said wells and of the operation thereof up to date of final settlement; and that, if this relief is refused, then that all such expenditures and outlays by

said defendants in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Pure Oil Operating Company and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Solicitors for Respondents.

Indorsed:—Answer. Filed Sep. 29, 1917.

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- 17 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company of Louisiana, Standard Oil Company of Louisiana, Gulf Refining Company of Louisiana, Defendants.

And now come the defendants, W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubank, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold as liquidators of the Natalie Oil Company, in the above and entitled cause, and move the Court for leave to amend their answer, as will appear

in the amended answer herewith filed. That said amendments are material and necessary to a proper defense of the case; that the matter as amended and the amendments offered were not incorporated in the original answer because of the fact that counsel for defendants had not at the time within which the answer was due accurate knowledge of the facts stated in the amendments.

Wherefore, they pray that said amendments be allowed and considered a part of the answer upon the hearing of this cause.

**BARNETTE & BLANCHARD,
THIGPEN & HEROLD,**
Attorneys for Defendants.

18 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

This cause coming on to be heard on the motion of defendants to amend their answer, and both parties having appeared, and the Court being fully advised of the amendments sought to be made to the answer of the defendants heretofore filed in this cause, it is hereby ordered, ad.

judged and decreed that the motion be granted and that the amendments as set forth in the motion be allowed; and the Clerk of the Court is hereby ordered to file the same as of the date of this order, as amendments to the original answer.

Thus done and signed at Chambers, at Shreveport, Louisiana, on this the 31 day of October, 1917.

GEO. WHITFIELD JACK,
United States District Judge.

19 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

Amended answer of W. H. Matthews, Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, F. A. Leonard, Dillard P. Eubanks, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants in the above entitled and numbered cause.

Now come the said defendants and, with leave of this Court first had and obtained, file this amendment to the answer heretofore filed, as follows:

Defendants amend Article XI of their original answer so as to read as follows:

XI.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said wells were drilled in good faith and under such belief of right.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, of any such liability there be, for the value of any oil extracted therefrom.

And defendant shows that the actual cost to your defendant of the drilling of said wells was the sum of Forty-one Thousand Three Hundred and Seventy-eight
 20 & 26/100 Dollars (\$41,378.26); and that the actual cost to your defendant of the operation of said well for the production of oil, up to and including July 31st, 1917, amounted to Twenty-five Thousand, Six Hundred and Sixty-two & 90/100 Dollars (\$25,662.90).

Wherefore, reaffirming the allegation and prayer of their original answer filed herein, defendants pray for judgment as originally prayed for.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Attorneys for Defendants.

Indorsed :—Amended Answer. Filed Oct. 31, 1917.

21 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 10, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even if
22 the said defendants are entitled to a set off, or
 counterclaim, in any amount, which is denied,
 the sum claimed by the defendants is excessive
and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and dis-

allowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.

23 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port, Division.

United States of America, Plaintiff,
vs. No. 1168, In Equity.
W. H. Matthews, Et Al., Defendants.

I.

Now into this Honorable Court comes the United States, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and with respect shows:

II.

That in the original reply to the answer of defendants filed herein, plaintiff inadvertently referred to paragraph 10 of said answer as being one of the paragraphs where- in a set off and counterclaim was asserted. Plaintiff shows that the said set off and counterclaim are asserted in paragraph II, and the prayer of said answer, and the said reply should be amended accordingly.

III.

Wherefore, reaffirming the allegations and prayer of the original reply filed herein, plaintiff prays that said reply be amended as hereinabove set forth.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Amended Reply to Defendants' Set Off and Counterclaim. Filed Oct. 6, 1917.

24 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1168 In Equity.
W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A.
McMullen, F. A. Leonard, Sam W. Mason, H. Earl
Barnes, Dillard P. Eubank, Natalie Oil Company,
Pure Oil Operating Company, Gulf Refining Com-
pany of Louisiana, Standard Oil Company of Louisi-
ana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to set off and counterclaim asserted by defendant the Pure Oil Operating Company in the amended answer herein, shows:

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said amended answer relating to said set off and counter claim, and particularly paragraph 11, and the prayer of said amended answer.

IV.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and dis-

allowed, and that plaintiff here relies in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Reply to Six (6) and Counter Claims of Defendant (Pure Oil Operating Company) in the Amended Answer. Filed Nov. 5, 1917.

- 26 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America, Plaintiff,

vs.

No. 1166 in Equity.

W. H. Matthews, Mrs. Lydia Hannon McMillan, J. A.
McMillan, F. A. Leonard, Sam W. Mason, H. Earl
Harnes, Willard P. Edmund, National Oil Company,
Pure Oil Operating Company, Gulf Refining Com-
pany of Louisiana, Standard Oil Company of Louisi-
ana, Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana
Sitting Within and for the Shreveport Division:

The answer of the Standard Oil Company of Louisi-
ana, one of the defendants, to the Bill of Complaint of
the United States of America, complainant.

This defendant avails and reserves unto itself all
and all manner of benefits and advantages of exemption,
which can or may be had or taken in the many cases,
uncertainties and other imperfections in said Bill of

Complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says as follows:

First: This defendant is not sufficiently informed as to the matters and things alleged and set out in paragraphs one and two of said Bill of Complaint to admit the same as therein stated, and, therefore, formally denies the same and leaves the complainant to make such proofs thereof as it may be advised.

Second: This defendant denies that it took possession of any part of the property described in paragraph three of plaintiff's Bill of Complaint, or that it drilled any wells thereon, but admits that it took oil from said property, or a part thereof, under the terms and conditions hereinafter stated.

Third: In answer to the fourth paragraph of plaintiff's Bill of Complaint, this defendant says that
 27 it is not sufficiently informed as to whether any of its co-defendants were in possession of the property on the day and dates therein alleged, and for that reason it is unable to admit the matters and facts therein stated; but it denies that it was in possession of said property, or any part thereof, or, at the time, claiming rights of any nature or character whatever in connection therewith.

Fourth: In answer to the fifth paragraph of plaintiff's Bill of Complaint this defendant admits that L. Hanszen (now Mrs. McMullen) and W. H. Matthews made a mineral location on said property, but it is not sufficiently advised in the premises to say whether the

location was legal or illegal, and, therefore, formally denies that said mineral location was illegal, and leaves the Complainant to make such proof thereof as it may be advised; that it is not advised as to whether the locators made an effort to explore said land, but admits that they made and executed a mineral lease thereon to E. H. Jennings, and that the said E. H. Jennings made a transfer thereof to the Pure Oil Operating Company, one of its co-defendants, as therein alleged, and, that, Dillard P. Eubank, Sam W. Mason, F. A. Leonard, H. Earl Barnes and the Natalie Oil Company acquired an interest in the royalties to be paid to the locators, Lydia Hanszen (now Mrs. McMullen) and W. H. Matthews, as therein alleged.

Further answering, this defendant admits that it has no interest or title in said property, and being without information as to the other matters of fact alleged in this paragraph of the Bill of Complaint is not in a situation to admit the same as therein stated, and it, therefore, formally denies the same and leaves the Complaint to make such proof thereof as it may be advised; but this defendant avers, however, that it is unable to state what quantity of oil was taken from said property, or from what wells said oil was taken, and the number of wells drilled on said property; that it took a part of the oil produced from said property which was run into its pipe lines as hereinafter stated.

Fifth: This defendant avers that on February 26, 1912, the said Pure Oil Operating Company, L. Hanszen (now Mrs. McMullen), D. P. Eubank, Sam W. Mason, F. A. Leonard, W. H. Matthews and H. E. Barnes executed a division order, or agreement, with this defendant, wherein and whereunder they declared, certified and guaranteed to it that they were the legal owners of

wells Nos. 1 and up drilled in the NW $\frac{1}{4}$ of Section 10, Township 20, Range 16, which, as your defendant is advised, embraces a part of the property described in the Bill of Complaint, and, that this defendant acquired oil from said parties, in good faith, and for valuable consideration, taken from said property, but this defendant is without information as to the number of wells drilled on said property, or the amount of oil taken therefrom, and whether the same was located on the particular property, the ownership of which is now claimed by the complainant, and this defendant annexes hereto a copy of the contract under which said oil was taken and the various assignments, and makes the same a part hereof, and marked "Defendant—Exhibit A."

Sixth: This defendant further answers that the oil so taken was acquired from said parties at the market price thereof on the respective dates on which the same was run into its pipe lines; that the total number of barrels of oil taken by this defendant from said parties amounts to 68,592.38 barrels, of the value of \$65,786.95; that of the amount due for said oil the sum of \$35,790.74 has been paid to the respective claimants, as hereinafter set out, and that this defendant now has in its hands \$29,996.21 to be paid to the rightful owner, or owners; when the question of title to said property from which said oil was taken is finally determined. All of the oil taken, as aforesaid, and the amounts paid and retained will be shown by itemized statement which will be produced on the hearing hereof.

Seventh: This defendant denies that it bought said oil in bad faith. On the contrary, it avers that it acquired same in good faith, and run the same into its pipe lines from wells claimed to be owned by its co-defendants.

Eighth: Defendant further avers that it does not know and is not informed which one of the well or wells drilled on said property is or are on the land in controversy, but that said oil was bought by it from the supposed owners, as alleged in paragraph five of this answer, and that the same was received and taken by it into its pipe lines, but not from any particular, separate or distinct or designated well or wells, but that all of said oil was run and taken from wells drilled on said premises without reference to any particular or designated well or wells, and that it is unable to state with any degree of certainty the amount of oil taken from any or from each of the wells drilled on said property.

29 and that prior to the taking of any of said oil it was advised by the alleged owners that the title thereto was vested in them, and that the oil so bought was acquired in good faith.

Ninth: Further answering, this defendant avers, in the alternative, that it acquired said oil from its co-defendants, who warranted the title to the property from which the same was taken, that in the event their title to said property should be declared void, and this defendant held for the purchase price thereof, its co-defendants would constitute warrantors of the title thereto; and they being parties to said suit, should this defendant be declared liable to the said complainant, for the value thereof, then, and in that event, it should have a like judgment against its co-defendants for such judgment as may be rendered against it in the premises; that such relief, in behalf of this defendant, would avoid a multiplicity of suits, and that in law and equity, should it be cast, it is entitled to a like judgment against each of them for such amounts as might be shown to have been paid to them.

Tenth: Further answering this defendant avers that when some question was raised as to the ownership of said property it required of said defendants bonds of indemnity to secure it against any loss which might be occasioned by any successful claim urged against their said titles, and to that end some of said parties executed bonds to indemnify it against loss of any nature or character whatever occasioned by adverse claims of ownership to said property, or the oil taken therefrom; that in conformity with said requirement, the said Pure Oil Operating Company executed a bond, of date June 15th, 1914, in the sum of \$50,000.00 with the American Surety Company of New York as surety, as shown by copy attached hereto and marked "Defendant Exhibit B"; that H. L. Heilperin and H. E. Barnes executed bond for \$5,000.00, of date January 25, 1914, with J. A. Thigpen and S. L. Herold, both residents of Caddo Parish, Louisiana, as surety, as also shown by copy of said bond annexed hereto and marked "Defendant Exhibit C"; that D. P. Eubanks executed a bond for \$2,500.00, of date June 14, 1913, with the United States Fidelity & Guaranty Company as surety, which is also shown by copy of said bond which is annexed hereto and marked "Defendant Exhibit D"; that said Sam W. Mason executed a bond for \$2,500.00, of date February 9, 1914, with H. L. Heilperin as surety, which is also shown by copy of said bond which is annexed hereto and marked 30 "Defendant Exhibit E"; that the said Sam W.

Mason executed another bond for \$2,500.00, of date June 5th, 1914, with H. L. Heilperin also as surety, which is also shown by copy of said bond which is annexed hereto and marked "Defendant Exhibit F"; that upon the execution of said bonds the said sum of \$35,790.74 was paid to its co-defendants, on the faith thereof, said amounts, so paid, being shown by itemized

statement to be produced on the hearing hereof; and this defendant reserves the right, in the event it should be cast in this proceeding, to proceed against said sureties and principals to recover any loss it may sustain by reason of any judgment which may be obtained by the complainant against it.

Wherefore, this defendant having made full and complete answer to all the matters and things required of it in plaintiff's Bill of Complaint, prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and on final hearing should this defendant be cast, that a decree be entered in its favor against its co-defendants for such judgment as may be rendered against it on the demands of the complainant; and, finally, this defendant prays for all general and equitable relief in the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all other necessary orders and decrees as it may be entitled to in equity and good conscience, and from the nature and character of this case.

J. C. PUGH & SON,
Solicitors for Standard
Oil Co. of La.

31 DEFENDANT EXHIBIT A.

Copy.

Shreveport, La., Feby. 26, 1912.

To The Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of.....Wells Nos. 1 and up on the Hanszen-Matthews Farm, NW $\frac{1}{4}$ Sec. 10, Township 20-R.

16 Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit to	Division of Interest.	Postoffice Address.
The Pure Oil Operating Co.	$\frac{7}{8}$	
L. Hanszen	$\frac{3}{8}$ of $\frac{1}{8}$	517 Marshall St., Shreveport, La.
D. P. Eubank	$\frac{1}{8}$ of $\frac{1}{8}$	Box 412, Shreve- port, La.
Sam W. Mason	$\frac{1}{8}$ of $\frac{1}{8}$	517 Marshall St., Shreveport, La.
F. A. Leonard	$\frac{1}{8}$ of $\frac{1}{8}$	Court House, Shreveport, La.
W. H. Matthews	$\frac{1}{8}$ of $\frac{1}{2}$	517 Marshall St., Shreveport, La.
H. E. Barnes	$\frac{1}{8}$ of $\frac{1}{8}$	235 Stoner Ave., Shreveport, La.

Tank Nos.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company

of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

- (1) By E. H. JENNINGS, Treasurer.
- (2) F. A. LEONARD,
- (3) SAM W. MASON,
- (4) H. E. BARNES,
- (5) D. P. EUBANK,
- W. H. MATTHEWS,
- L. HANSZEN.

Witness:

W. J. HIGGINS (1),
S. L. CRONIN (2, 3, 4 & 5).

Approved:

J. C. PUGH.

32

Copy.

March 11th, 1912.

To The Standard Oil Co. of La.:

The undersigned has this day sold $\frac{1}{2}$ of his interest in Wells Nos. 1 and up, on Hanszen-Matthews Farms, Mineral Location in Sec. 10, T. 20, R. 16, in Township, Caddo Parish, State of Louisiana, as below:

Interest.	Name.	Postoffice Address.
1/128	H. L. Heilperin,	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

H. E. BARNES.

Tank Nos.

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their

assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

H. L. HEILPERIN.

Witness:

FRANK SHROPSHIRE.

J. C. PUGH.

33

Copy.

March 1st, 1916.

To The Standard Oil Company of La.:

The undersigned has this day sold 1/64 interest in Wells Nos. 1 and up, on Hanszen-Matthews Farm, Sec. 10, T. 20, R. 16, Township, Caddo Parish, State of Louisiana, as below.

Interest.	Name.	Postoffice Address.
1/64	Natalie Oil Company,	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tank Nos.

H. E. BARNES,
 ESTATE OF H. L. HEILPERIN,
 By MARX. BLUESTEIN,
 J. A. THIGPEN, Executors.

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,

By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.

(Copy)

State of Louisiana,
Parish of Caddo.

Know all men by these presents, That we, The Pure Oil Operating Company, as principal and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in full sum of Fifty Thousand (\$50,-

000.00) Dollars, for the payment of which we bind ourselves, our successors and legal representatives, jointly and in solido by these presents.

Dated at Shreveport, Louisiana, this 15th day of June, in the year of our Lord, One Thousand Nine Hundred and Fourteen.

The conditions of the above obligations is such that:

Whereas, the said Pure-Oil Operating Company as the lessee of L. Hansen et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three (3) and Four (4), Township 20, North, Range 16, West, being the same tract of land located under the placer mining laws by the lessors on April 2nd, 1910, as appears from the said location recorded in the Conveyance records of Caddo Parish, La., and,

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ of error and sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said Pure Oil Operating Company; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hansen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Ten, Township Twenty, North, Range sixteen, West,
 35 and being more particularly described as follows:

Beginning at a point twenty-four chains East of the Northwest corner of said Section ten; thence South

twenty degrees West ten chains; thence north forty-three degrees East twenty chains to a stake at square corner, which is the beginning of the tract as located and located located; thence north sixty degrees west eight and five-tenths chains; thence north five chains; thence north forty-five degrees East ten chains; thence South forty degrees west one and sixty-one one-hundredths chains; thence West thirty-four and fifty-six one-hundredths chains to stake on trappers line; thence North thirty degrees East thirteen and eight one-hundredths chains along trappers line; thence North seventy-eight degrees East along trappers line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres, more or less, a stake being set at each corner of said tract, and being the same land surveyed and the lines and corners marked by the locators on April 28th, 1904, under their title and claim under the Placer Mining Laws of the United States, as appears from said location, recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, patent has not yet been obtained under the said mining locations and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections three and four, Township twenty, Range sixteen, being a long narrow strip of land running along the South line of said Sections and known as the "Glass Mineral Hill"; and,

Whereas, the said Standard Oil Company of Louisiana, the assignee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said above pieces of land above described,

4
5

and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company.

36 Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United States of America, and to all and every other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the Credit of and purchased from other and third persons claiming to be interested therein, but only to cover and embrace the oil run therefrom to the credit of and purchase from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING
COMPANY,

By E. H. DEMMINGS,

Its President.

(Seal)

Attest:

W. J. HIGGINS, Its Secretary.
AMERICAN SURETY COMPANY
OF NEW YORK,

By LEON R. SMITH,

Resident V.-Pres. (Seal)

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

W. B. CARLON,
C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

N. C. BLANCHARD,
GEO. G. DIMICK.

Approved:

J. C. PUGH.

37

(DEFENDANT'S EX. C.)

State of Louisiana.

Parish of Caddo.

Know all men by these presents: That we, H. L. Heilperin and H. E. Barnes, as principal, and J. A. Thigpen and S. L. Herold, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana in the sum of Five Thousand (\$5,000.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 25th day of January, A. D. 1914.

Now the condition of the above obligation is such that:

Whereas, the Pure Oil Operating Company claims to have a lease on two tracts of land in Caddo Parish, under assignments of lease from E. H. Jennings, the said Jennings having leased one of said tracts from L. Hanszen and others on tract of land located by said lessors under the Placer Mining Laws on April 2, 1910,

and fully described in notice of location in Conveyance Book 59, Page 267, of the records of Caddo Parish; and the other lease having been executed to said Jennings by L. Hanszen and others on the tract of land containing thirty-seven acres in the Northwest $\frac{1}{4}$ of Section 10, Township 20 North, Range 16 West; the said tract having also been located by the said lessors under the Placer Mining Laws of the United States, on which said company has drilled wells producing oil.

Whereas the oil from said wells is being run by the Standard Oil Company of Louisiana, and the above bounden H. L. Heilperin and H. E. Barnes claim a royalty jointly of one-thirty-second ($\frac{1}{32}$) of the oil produced from said wells under the terms of the lease made by E. H. Jennings, as per said contracts, and,

Whereas, by the contract under which the Standard Oil Company of Louisiana is taking said oil from said wells, as aforesaid, the said H. L. Heilperin, and H. E. Barnes have the right to withdraw their part of the proceeds from said oil run from said wells by executing bond with approved security:

Now, therefore, if the said bounden H. L. Heilperin and H. E. Barnes, shall hold the said Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants whatever to said property, or to the oil produced therefrom, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said H. L. Heilperin and H. E. Barnes, together with all damages and costs, then and in such event, this obligation to be null and void, otherwise to remain in full force and effect.

Thus done and signed in the presence of the undersigned witnesses on this the 25th day of January, A. D. 1914.

H. L. HEILPERIN,
H. E. BARNES,
J. A. THIGPEN,
S. L. HEROLD.

Witnesses:

E. G. COLLINS,
WHEELER SHROPSHIRE.

Approved:

J. C. PUGH.

39

DEFENDANT EX. D.

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, D. P. Eubank, as principal, and the United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Twenty-Five Hundred (\$2500.00) Dollars, which said sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 14th day of June, 1913.

Now the condition of the above obligation is such-that:

Whereas the above bounden D. P. Eubank claims to be the owner of an undivided one-sixty-fourth (1/64)

interest in and to what is known as Lease No. 64, on the Hanzen-Matthews Farm in Section three (3) and four (4), Township 20, North, Range 16 West, and also an owner of an undivided one-sixty-fourth ($1/64$) interest in and to what is known as Lease No. 65, on the Hanzen-Matthews Farm in Section 10, Township 20 North, Range 16 west, in Caddo Parish, Louisiana, and,

Whereas the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounded D. P. Eubank claims to be entitled to the one-sixty-fourth ($1/64$) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana, from each of the above wells; and

Whereas by the contract, under the Standard Oil Company of Louisiana, is taking such oil from said well, as aforesaid, the said D. P. Eubank has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security.

40 Now, therefore, if the said above bounden D. P. Eubank shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said D. P. Eubank, under his said claim as owner of an undivided one-sixty-fourth ($1/64$) interest in said oil secured from each of the above wells, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) D. P. EUBANK

(Seal)

Witness to signature of D. P. Eubank:

(Signed) J. S. PETERS,
T. S. WHITE.

UNITED STATES FIDELITY &
GUARANTY CO.,

By (Signed) WILLIAM H. KLINE SMITH,
Its Atty. in Fact.

Witness:

(Signed) E. P. HURMIN.

State of Louisiana,
Parish of Caddo.

Before me, Sam W. Mason, a notary public, in and for Caddo Parish, State of Louisiana, duly commissioned and qualified, personally came and appeared D. P. Eubank, who acknowledged to me that he has signed the above and foregoing bond on the day same bears date.

Given under my seal and signature of office, this, the 17th day of June, A. D. 1913.

(Signed) SAM W. MASON,
Notary Public in and for
Caddo Parish, Louisiana.

Approved:

J. C. PUGH.

Witness:

J. S. PETERS,
T. S. WHITE.

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 9th day of February, A. D. 1914;

Now the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 3555 and 387, and to which reference is hereby had, and which said properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana in taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said
42 oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden Sam W. Mason shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,

(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,
CREA PUGH.

Approved:

J. C. PUGH.

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 5th day of June, 1914.

Now the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 355 and 387, and to which reference is hereby had, and which properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said
 44 oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden Sam W. Mason shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,
 (Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,
 R. WOLF.

Approved:

J. C. PUGH & SON.

Filed Oct. 1, 1917.

45 (INTERROGATORIES PROPOUNDED TO
PURE OIL OPERATING CO., GULF
REFINING CO. OF LA. AND STANDARD
OIL CO. OF LA., BY PLAINTIFF.)

(1)

In the answer of the Pure Oil Operating Company to the bill of complaint herein, it is stated that said Company drilled the wells known as Pure Oil Operating Company's Hanszen, or Hanszen-Matthews, Nos. 2, 3, 4 and 5. State when said wells were commenced and when they were completed.

(2)

In said answer of the Pure Oil Operating Company, it is further stated that the production of oil from the land in controversy to July 31, 1917, was 77,605.17 barrels, of the value of \$68,564.62. State whether or not the production of said well as given in said answer is exact or estimative.

(3)

State the total production of oil from the said wells (2) up to July 1st, or July 31, 1917, and (b) from July 1st, or July 31, 1917, to January 1, 1918.

(4)

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5)

Was a separate and complete record kept by the Pure Oil Operating Company of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6)

If the production as given by you in your answer in the bill of complaint and in your answers to the preceding interrogatories is based on an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the wells in suit.

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(7)

State the total market value of the oil produced by the Pure Oil Operating Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(8)

Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1, 1912, the production of said wells was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana. If the

production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom.

(9)

State the quantity and value of the oil extracted from the land in controversy, which was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana.

(10)

State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

(11)

What was the total price received by the Pure Oil Operating Company for all the oil produced by the wells in controversy. Please state separately the price received by the Pure Oil Operating Company from the Gulf Refining Company of Louisiana, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana, for the oil extracted from the land in suit, and sold to said Companies, respectively.

(12)

Was not the said oil sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana delivered to said Gulf Refining Company on the land where it was produced, that is, on the property in controversy, by transfer from a tank or tanks, in which the

oil was stored, to a pipe line belonging to the Gulf Refining Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Gulf Refining Company of Louisiana?

(13)

Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

(14)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

(15)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

(16)

Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity

of oil transferred from the tank, or tanks, to the pipe line of said Gulf Refining Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

48

(17)

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipeline run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line. If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(18)

In the answer of the Standard Oil Company to the bill of complaint herein it is stated that 68,592.38 barrels of oil of the value of \$65,786.95 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred

to in said answer was taken from the property in controversy in this case?

(19)

State the quantity and value of all the oil taken and removed by the Gulf Refining Company of Louisiana from the land involved in this suit.

(20)

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$35,790.74 has been paid to the claimants of said oil, and that \$29,996.21 is held for payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

49

(21)

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(22)

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said

oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(23).

What are the principal products manufactured from petroleum, or crude oil?

(24)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(25)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

(26)

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(27)

How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of

sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Note: All of the above interrogatories, except Nos. 18, 20, 21, 22, 23, 24, and 25 to be answered by the Pure Oil Operating Company.

Interrogatories 8, 9, 12, 14, 16, 19, 22, 23, 24, 26, and 27 are to be answered by the Gulf Refining Company of Louisiana, and no other interrogatories are to be answered by that Company.

Interrogatories Nos. 8, 10, 13, 15, 17, 18, 20, 21, 23, 25, 26 and 27 are to be answered by the Standard Oil Company of Louisiana, and no other interrogatories are to be answered by that Company.

Indorsed: Interrogatories to be Answered by the Pure Oil Operating Company, The Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana. Filed Feb. 2, 1918.

51 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Complainant,
 vs. No. 1168, In Equity.
W. H. Matthews, Et. Al., Defendant.

In the above entitled matter now comes the Standard Oil Company of Louisiana, one of the defendants herein, through its undersigned counsel, and suggesting to the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are interrogatories Nos. 25 and 26, as follows:

Interrogatory No. 25: State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

Interrogatory No. 26: State the total profits made by you (a) from the sale or any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the profits of said crude oil.

Now this defendant avers that it will fully appear by the petition and answer herein that the only issuable facts between the plaintiff and this defendant is the value of the oil bought by it from the property in dispute, the ownership of which is claimed by plaintiff; that from the issues made up the answers to these two interrogatories could in no way tend to support the demands of the plaintiff against this defendant, and are, therefore, ir-

relevant and immaterial to any issues involved in said cause as between the plaintiff and this defendant, and an answer thereto would not illicit any fact or facts material to the support of plaintiff's action, and that said interrogatories should be stricken out.

52 Wherefore, this defendant prays that after due consideration said two interrogatories be stricken out and that this defendant be dispensed with the necessity of answering the same.

It prays for all rules, orders and decrees needful, and for cost and general relief.

J. C. PUGH & SON,
Atty. for Standard Oil Co. of La.

Indorsed:—Motion of the Standard Oil Company of Louisiana to Strike Out Interrogatories Nos. 25 and 26. Filed Feb. 1, 1918.

B.

53 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant.

vs. No. 1168, In Equity.

W. H. Matthews, Et. Al., Defendant.

In the above entitled matter Amos K. Gordon, Secretary and Treasurer of the Standard Oil Company of Louisiana, appears and answers the interrogatories propounded to the Standard Oil Company of Louisiana, (except Nos. 25 and 26—a motion having been made to strike them out) as follows:

Interrogatory No. 8: Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1st, 1912, the production of said wells was sold by the Pure Oil Operating Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it has no information as to the sale of oil from the property referred to prior to February 27, 1912, but on that date it began to take oil from the wells in question.

Interrogatory No. 10: State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement marked "Exhibit A" shows the quantity and value of the oil bought by it from the Pure Oil Operating Company from February 27, 1912, (date of first run) to August 1, 1917.

Interrogatory No. 13: Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company

of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the oil in question was sold by the Pure Oil Operating Company to it from tanks located on the property in dispute, and was transferred from tanks in which it was stored to the pipe line belonging to it, and that said oil was conveyed from said tanks in pipe lines belonging to it.

Interrogatory No. 15: What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the quantity and value of the oil sold to it by the Pure Oil Operating Company from the property in dispute. It answers that it is unable to state from what particular wells the oil was taken as alleged in its answer, as it had no control or jurisdiction over the wells but bought the oil as delivered in tanks.

Interrogatory No. 17: Is it not a fact that the agent, representative or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascer-

tain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is a fact that the representative of this Company went upon the land in controversy and gauged the tank from which the oil was taken, and that said representative did not measure and ascertain the amount of oil purchased by it from the Pure Oil Operating Company.

Interrogatory No. 18: In the answer of the Standard Oil Company to the bill of complaint it is stated that 68,592.38 barrels of oil of the value of \$65,786.95 was taken by it from the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this case?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the actual number of barrels of oil taken and the value thereof, and according to the information of its agents and employees it is advised that the oil was taken from the property in dispute.

Interrogatory No. 20: In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$35,790.74 has been paid to the claimants of said oil, and that \$29,996.21 is held for pay-

ment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

55 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement shows the exact amount of money paid for oil bought from the Pure Oil Operating Company said to have been taken from the property in dispute, and the names of the various persons to whom the money was paid, and the amount of money now held in its hands to be paid to the rightful owner or owners when the title to said property is finally settled. The annexed division order and transfer orders will show the names and addresses of the respective parties inquired about in said interrogatory,—and marked "Exhibit B."

Interrogatory No. 21: State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged as the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it is engaged in the manufacture and sale of oil and its products; and the oil taken from the property in con-

troversy being of a light character was probably manufactured, although all the oil taken from wells in this locality was run into the pipe line and it could not be stated with absolute certainty that this particular oil was manufactured.

Interrogatory No. 23: What are the principal products manufactured from petroleum, or crude oil?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the principal products manufactured from petroleum, or crude oil, are what is commercially known as gasoline, kerosene, engine distillate, lubricating oils of various grades, gas oil, fuel oil, paraffine and coke:

Interrogatory No. 27: How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement referred to will show all of the money paid to the royalty owners, and furnish such other information as is inquired about in this interrogatory.

A. K. GORDON,
Secretary and Treasurer.

Sworn to and subscribed before me on this the 8th day of February, 1918.

(Seal) F. B. BEALE,
Notary Public, in and for the
Parish of East Baton Rouge,
Louisiana.

56 Indorsed:—Answer of the Standard Oil Company of Louisiana to Interrogatories. Filed Feb. 11, 1918.

57 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1168, In Equity.
W. H. Matthews, Et. Al., Defendant.

In the above entitled and numbered cause, now comes the Pure Oil Operating Company, through W. J. Higgins, its Treasurer, a proper Officer of the said corporation for the answering of interrogatories to it herein, and answers, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Well No. 2 was commenced June 20th, 1911, and completed August 3rd, 1911; Well No. 3, commenced May 4th, 1912, and completed June 7th, 1912, (abandoned in January, 1914); Well No. 4 commenced November 20th, 1912, completed December 31st, 1913; and Well No. 5, commenced January 13th, 1914, completed February 25th, 1914, (as a dry hole).

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to August 1st, 1917, for account of this defendant, are exact.

To Interrogatory No. 3, defendant answers:

(a) Up to August 1st, 1917, the number of barrels of oil run from the land in controversy, for account of this defendant was 77,605.16 ($\frac{7}{8}$ of the total production) of the value of \$68,564.66;

(b) From August 1st, 1917, to January 1st, 1918, for account of this defendant, 1,222.56 barrels ($\frac{7}{8}$ of the total production), of the value of \$2,413.29.

To Interrogatory No. 4, defendant answers:

Said wells Nos. 2 and 3 were run together from November, 1912, to January, 1914, (when No. 3 was abandoned); and said Wells Nos. 2 and 4 were run together from January, 1914, (when No. 4 was brought in); but the wells involved in this suit were not run in connection with other wells not involved in this suit.

To Interrogatory No. 5, defendant answers:

Yes, the runs from the wells in question were kept separate from the runs from other wells, not involved in this suit.

To Interrogatory No. 6, defendant answers:

The production as given in answer to the bill of complaint is the production from said wells, run for account of this defendant, and not the total production from said wells, and is the exact production run from said wells for account of this defendant.

To Interrogatory No. 7, defendant answers:

The number of barrels of oil run from said land for account of this defendant, up to January 1st, 1918, was 78,827.72 barrels, of the value of \$70,977.95. The value

given is exact and is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 8, defendant answers:

Seven-eighths of the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana up to the first of March, 1912, and subsequent to that date, to the Standard Oil Company of Louisiana, seven-eighths being the interest owned by this defendants.

To Interrogatory No. 9, defendant answers:

17,586.83 barrels of oil ($\frac{7}{8}$ of the oil extracted from the land in controversy), of the value of \$11,001.25.

To Interrogatory No. 10, defendant answers:

61,240.89 barrels of oil ($\frac{7}{8}$ of the oil extracted from the land in controversy) of the value of \$59,976.70.

To Interrogatory No. 11, defendant answers:

The total price received by this defendant for its $\frac{7}{8}$ of the oil produced by the wells in controversy was \$70,977.95, \$11,001.25 from the Gulf Refining Company of Louisiana and \$59,976.70 from the Standard Oil Company of Louisiana (including the \$26,447.87 being held by the Standard Oil Company of Louisiana to its credit pending the result of this suit).

To Interrogatory No. 12, defendant answers:

Yes.

59 To Interrogatory No. 13, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana, for account of this defendant, was 17,586.83 barrels (or $\frac{7}{8}$ of the total production) of the value of \$11,001.25.

To Interrogatory No. 15, defendant answers:

The quantity of oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana, for account of this defendant, up to January 1st, 1918, was 61,240.89 barrels, of the value of \$59,976.70.

To Interrogatory No. 16, defendant answers:

Yes.

To Interrogatory No. 17, defendant answers:

Yes.

To Interrogatory No. 19, defendant answers:

The quantity of oil taken away and removed by the Gulf Refining Company of Louisiana from the land involved in this suit, for account of this defendant, was 17,586.83 barrels, of the value of \$11,001.25.

To Interrogatory No. 26, defendant answers:

The actual cost to this defendant of drilling, equipping and operating said wells up to August 1st, 1917, was\$67,041.16;

The Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana purchased from this defendant its $\frac{7}{8}$ of the total production of said wells (77,605.16 barrels) up to August 1st, 1917, for..... 68,564.66

Or a net profit to August 1st, 1917, of..... \$1,523.50.

To Interrogatory No. 27, defendant answers:

No moneys were paid out as royalty by this defendant to any of the other defendants herein, but in accordance with its lease from said co-defendants, this defendant delivered as royalty in tanks, from which the oil was purchased by the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, to the credit of the said lessors, one-eighth of the oil produced from said wells, which said oil was sold by the
60 said co-defendants to the said pipe line companies; part of which, defendant is informed, said purchasing companies have paid, and others parts of which, according to defendant's information, said purchasing companies are holding, pending the result of this suit; the amounts paid and the amounts withheld being unknown to this defendant.

The total value of the oil extracted from said land, for account of this defendant, up to January 1st, 1918, was \$70,977.95, of which amount it has received \$44,530.08, the remaining \$26,447.87 being held by the Standard Oil Company of Louisiana, to the credit of this defendant, pending the result of this suit.

W. J. HIGGINS.

Sworn to and subscribed before me on this the 13th day of April, 1918.

HILDA R. SAUER,

(Seal)

Notary Public in and for
Allegheny County, Penna.

My Commission expires at end of next session of Senate.

Indorsed:—Answer of Pure Oil Operating Company to Interrogatories. Filed Apr. 20, 1918.

B.

61 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Complainant,

vs. No. 1168, In Equity.

W. H. Matthews, Et. Al., Defendant.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 8, defendant answers:

Not having information with respect to the same, this defendant cannot answer this interrogatory, except to report that up to March 1st, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company and locators to the Gulf Refining Company of Louisiana, $\frac{7}{8}$ by the Pure Oil Operating Company and $\frac{1}{8}$ by locators.

To Interrogatory No. 9, defendant answers:

17,586.83 barrels of oil, of the value of \$11,001.25, representing $\frac{7}{8}$ of the production from said well to March 1st, 1912.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

20,099.23 barrels of oil, of the value of \$12,572.85.

To Interrogatory No. 16, defendant answers:
Yes.

To Interrogatory No. 19, defendant answers:
20,009.23 barrels of oil, of the value of \$12,572.85.

To Interrogatory No. 22, defendant answers:

The Gulf Refining Company of Louisiana is not now nor was it at the time of the purchase of the said oil engaged in the manufacture of any products of oil.

62 To Interrogatory No. 23, defendant answers:
Gasoline, kerosene and lubricating oils.

To Interrogatory No. 24, defendant answers:

The Gulf Refining Company of Louisiana never manufactured any products from any oil extracted from the land in controversy.

To Interrogatory No. 26, defendant answers:

The Gulf Refining Company of Louisiana made no profit from the sale of any of the crude oil extracted from the land in controversy. It purchased 20,009.23 barrels of said oil for its value, \$12,572.85, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of ten cents per barrel, or \$2,009.92, which represents approximately the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company. No, products manufactured.

To Interrogatory No. 27, defendant answers:

The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil. It purchased the said oil from the following parties in the following proportions:

Pure Oil Operating Company,.....	$\frac{7}{8}$	.....	$\frac{7}{8}$
L. Hanszen,	$\frac{3}{8}$ of $\frac{1}{8}$		
Sam W. Mason,	$\frac{1}{8}$ of $\frac{1}{8}$		
D. P. Eubanks,	$\frac{1}{8}$ of $\frac{1}{8}$	.....	$\frac{1}{8}$
F. A. Leonard,	$\frac{1}{8}$ of $\frac{1}{8}$		
W. H. Matthews,	$\frac{1}{8}$ of $\frac{1}{8}$		
H. E. Barnes,	$\frac{1}{8}$ of $\frac{1}{8}$		

and paid for same in the same proportions.

No royalty is being held up.

C. R. MINOR.

Sworn to and subscribed before me on this the 15th day of March, 1918.

J. A. THIGPEN,

(Seal)

Notary Public in and for
Caddo Parish, La.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

63 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Company, Pure Oil Refining Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

And now comes the Standard Oil Company of Louisiana, made one of the defendants in the above cause, and

availing itself of the reservations made in its answer, now moves the Court to dismiss the Bill filed in this cause as against this defendant, because said Bill does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against this defendant.

Wherefore, this defendant prays the judgment of this Court on the matter herein submitted, and that the suit against it be dismissed with cost.

J. C. PUGH & SON,
Solicitors for Standard Oil
Co. of La.

Indorsed: Motion to Dismiss as to the Standard Oil Company of Louisiana. Filed Feb. 27, 1918.

B.

64 Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1168 In Equity.
W. H. Matthews, et als.

In this cause, now into Court comes the Standard Oil Company of Louisiana, one of the defendants herein, appearing through its Solicitor, Judge J. C. Pugh, and files Motion to Dismiss this suit.

Thereupon, this cause came on to be heard upon the said Motion to Dismiss and also upon the Motions to Strike out certain interrogatories—Mr. Rober A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the Complainant, and Mr. Leon R. Smith, Judge J. C. Pugh and Mr. Wm. C. Barnette, appearing as Solicitors for defendants. The said Motion of the Standard Oil Company and Motion to Strike out certain interrogatories after having been argued by counsel on either side, were submitted and thereupon the Court overruled the Motion to Dismiss, to which ruling of the Court defendants excepted. The Motion to Strike out certain interrogatories was sustained, with leave for the complainant to renew said interrogatories at such time as it may seem proper.

65

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Thursday, Shreveport, La., February 28, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1168 In Equity.
W. H. Matthews, et als.

This cause came on this day to be heard upon the motion to dismiss heretofore filed by the Gulf Refining Com-

pany, one of the defendants herein, Mr. Robert A. Hunter, Special Assistant to the Attorney General appearing as Solicitor for the Complainant, and Mr. S. L. Herold, appearing as Solicitor for the defendant. The said motion to dismiss was argued, submitted and overruled by the Court.

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
 vs. No. 1168 In Equity.
 W. H. Matthews, et als.

This cause came on this day to be heard upon the Pleas filed herein by defendants—Mr. Robert A. Hunter appearing as Solicitor for complainant and Mr. S. L. Herold appearing for defendant. The matter was argued and submitted and taken under advisement by the Court.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1168 In Equity.

W. H. Matthews, et als.

In this cause, which cause had heretofore been argued by counsel and submitted, on the Pleas filed herein by defendants, counsel for either side being now present in open Court, decision is orally rendered by the Court overruling said Pleas with the right reserved to defendants to renew said pleas at the hearing of the case on the merits.

67 United States District Court, Western District
of Louisiana.

United States,

vs.

No. 1168.

W. H. Matthews, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

No. 1168 Plff. J.
R. B. Cook, Stenographer.

Suit No. 1168, U. S. vs. W. H. Matthews, et al.

Statement of Oil Run from Land in Suit by the Gulf Refining Co. of Louisiana from August, 1911, to February 27, 1912, inclusive, Division of Oil and Value.

		Bbls.	Value.
Total Oil Run		20,099.23	\$12,572.85
L. Hanszen McMullen	3/64	942.12	589.35
Sam W. Mason	1/64	314.05	196.45
D. P. Eubanks	1/64	314.05	196.45
F. A. Leonard	1/64	314.05	196.45
W. H. Matthews	1/64	314.05	196.45
H. E. Barnes	1/64	314.05	196.45

Total Royalty paid by the Gulf Refining Co. of La.		2,512.40	\$1,571.60
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Pure Oil Operating Co.	7/8	17,586.83	11,001.25
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Statement of the Oil Run from the Land in Suit by the Standard Oil Co. of Louisiana from February 27, 1912, to December 31, 1917, Division of Oil and Value.

		Bbls.	Value.
Total oil run		69,989.59	\$68,544.98
L. Hanszen McMullen	3/64	3,280.79	3,213.13
F. A. Leonard	1/64	1,093.62	1,071.05
D. P. Eubank	1/64	1,093.52	1,070.99

W. H. Matthews	1/64	1,093.64	1,071.05
Natalie Oil Co.		157.08	242.53
H. E. Barnes and	1/64		
H. L. Heilperin		939.43	828.48
Sam W. Mason	1/64	1,093.61	1,071.05
		<hr/>	<hr/>
Total Royalty paid by the Standard Oil Co. of La.		8,748.69	\$8,568.28
Pure Oil Operating Co.	7/8	61,240.99	\$59,976.70
Grand Total Royalty		11,261.09	\$10,139.88
Grand Total Paid Pure Oil Operating Co.		78,827.73	\$70,977.95
		<hr/>	<hr/>
Total Oil Produced on Land and Value		90,088.82	\$81,117.83
Total cost of drilling, equipping Wells 2, 3 and 4. No. 1 not drilled. No. 5 not on land in suit			\$29,283.08
Total cost of operating Wells 2, 3 and 4 to December 31, 1917			\$30,293.28
			<hr/>
Total cost of drilling, equipping and operat- ing wells on this land to Dec. 31, 1917			\$59,576.36
			<hr/>
Total value of oil produced to Dec. 31, 1917			\$81,117.83
Cost of drilling, equipping and operating ..			\$59,576.36
			<hr/>
Net value from land in suit			\$21,541.47
Total amount received and due the Pure Oil Operating Co. to Dec. 31, 1917			\$70,977.95

Cost of drilling, equipping and operating ..	\$59,576.36
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Net value received by the Pure Oil Operating Co.	\$11,401.59
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Drilling on No. 2 began June 17, 1911.

Well No. 1 was not drilled.

69

P-2.

Hanszen-Matthews.

Cost of Drilling, Equipping and Operating to December 31st, 1917.

No. 2. Cost of drilling and equipping	\$11,946.82
No. 2. Cost of operating Aug., 1911 to Dec., 1917	16,198.49
No. 3. Cost of drilling and equipping	7,504.21
Cost of operating June, 1912, to Dec., 1913	3,997.03
No. 4. Cost of drilling and equipping	9,832.05
Cost of operating Jan., 1914, to Dec. 31, 1917	10,097.76
Total	\$59,576.36

Well did not produce.

Total Including No. 5.

	Commenced	Completed
Well No. 1	July 15, 1910	Sept. 10, 1910.
Well No. 5	Nov. 15, 1913	Jan. 17, 1914.

Filed Jan. 21, 1919.

70 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Complainant,

vs. No. 1168 In Equity.

W. H. Matthews, et al., Defendant.

For defendant, Standard Oil Company of Louisiana,
it is urged for exception to the Report of Special Master:

First: That he should have given judgment against its co-defendants for the amount shown to have been paid them for the value of oil taken from the property in dispute, as they are all co-defendants and were called in warranty by this defendant, and as such a judgment would avoid a multiplicity of suits and finally settle the issues between the parties.

Second: That the Special Master erred in allowing interest from the filing of his Report; that interest should only be allowed from the finality of any judgment which may be rendered herein.

Wherefore, it prays that these exceptions be sustained and the recommendations of the Special Master be revised accordingly.

J. C. PUGH & SON,
Attorneys for Defendant, Standard Oil Company of La

Indorsed:—Exception to Report of Special Master.
Filed Jan. 23, 1919.

71 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1168 In Equity.

W. H. Matthews, et al., Defendants.

Now come W. H. Matthews, Mrs. Lydia Hanszen MacMullen, heirs and legal representatives of F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has reported and certified that the property in controversy at the date of the location thereof was withdrawn from entry under the placer mining laws of the United States; whereas he should have reported and certified that the property in controversy was not at that date so withdrawn.

2.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,
Solicitor for Defendants.

Indorsed:—Exceptions of W. H. Matthews, Mrs. Lydia H. MacMullen, Heirs and legal representatives of F. A. Leonard, Sam W. Mason, H. Earl Marnes, D. P. Eubank, and J. A. Thigpen and S. L. Herold, liquidators of the Natalie Oil Co. to the Report of the Special Master. Filed Jan. 30, 1919.

72 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1168, In Equity.
W. H. Matthews, et al., Defendants.

Now comes the Pure Oil Operating Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has reported and certified that the property in controversy at the date of the location thereof was withdrawn from entry under the placer mining laws of the United States; whereas he should have reported and certified that the property in controversy was not at that date so withdrawn.

2.

That the Master has reported and certified that there should be judgment against this defendant for the value of the oil extracted from the property; whereas he should have reported and certified that no money judgment should be rendered against this defendant.

3.

That the Master has reported and certified that this defendant should be held liable in solido with the mineral locators, to whom royalties were paid, for the amount and value of such royalty oil; whereas the Master should have reported and certified that even if judgment should be rendered against this defendant in any sum, this defendant should not be condemned for the value of said royalties.

4.

That the Master has reported and certified a solidary liability against this defendant and its lessors; whereas the Master should have reported and certified that even if a money judgment should be rendered against this defendant, and even though it should be condemned in solido with the lessors, that the liability of this defendant and should be held to be merely secondary, and an express provision made for its recovery back from its lessors of any sums paid by it on their account.

5.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

judgment rendered against it, at the rate of five (5.) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for the Pure Oil
Operating Company.

Indorsed:—Exception of the Pure Oil Operating Company to the Report of the Special Master. Filed Jan. 30, 1919.

74 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Plaintiff,
 vs. No. 1168 In Equity.
W. H. Matthews, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has reported and certified that this defendant should be held liable for the value of the oil

purchased by it from the Pure Oil Operating Company; whereas the Master should have reported and certified that this defendant merely purchased oil produced by the Pure Oil Operating Company, for which it has paid and, therefore, could not be liable to a third person therefor.

2.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,

Solicitors for the Gulf Refining
Company of Louisiana.

75 Indorsed:—Exceptions of the Gulf Refining Company of Louisiana to the Report of the Special Master. D. Edward Greer, Thigpen and Herold, Solicitors. Filed Jan. 30, 1919.

76 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

vs.

No. 1168.

W. H. Matthews, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court being plaintiff's exhibits "A", "B", "C", "D", "E", "F-1, 2, 3, 4, 5", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", which said exhibits were by agreement of counsel (record p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included T. 20 N., R. 16 W., and prohibited mineral locations on the

public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master
77 in his report.

2. As stated in the Master's report, the mineral location in this cause was made April 24, 1910. The testimony shows that no wells were drilled or begun and no work done on the land, leading to the discovery of oil, until the year 1911. (Testimony of S. L. Cronin, witness for defense, record, pp. 47 to 50, inclusive.) Defendants contended that a derrick for well No. 1 was built in May or June, 1910, but the testimony of S. L. Cronin, witness for defendants (pp. 47 to 50, inclusive), shows that the Pure Oil Operating Company did not drill and had no intention of drilling "Well No. 1", and merely erected the derrick for the purpose of giving the appearance of possession. The first well drilled on the land in 1911 was placed upon a location different from that occupied by the derrick above mentioned. Plaintiff avers that the drilling of said well, and the removal of oil from the said land, by the defendants, were in violation of both of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precluded a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. There was affirmative evidence in the record showing that the defendants were not in good faith in extracting and removing the oil from the land in controversy, because the record shows that the defendants, including the Pure Oil Operating Company (which said

Company asserted counterclaim allowed by the Master), gave bonds to the Standard Oil Company of Louisiana to protect said Company against adverse claims to the property and to the oil. The bond executed by the Pure Oil Operating Company, for the sum of \$50,000.00, contains a specific agreement to indemnify and hold harmless the Standard Oil Company of Louisiana from liability to the United States of America (see bond attached to answer of the Standard Oil Company of Louisiana to the bill of complaint and answer of the said Standard Oil Company of Louisiana to the interrogatories filed herein).

78 5. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, and likewise of the withdrawal order of July 2, 1910, (see testimony of Cronin, witness for defendants, pp. 42 and 46, and of Sam W. Mason, one of the mineral locators, p. 37). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against defendants, as follows, to-wit:

(a) Against the Pure Oil Operating Company and the Gulf Refining Company of Louisiana, in solido, for amount of oil produced by Pure Oil Operating Co. and delivered to the Gulf Refining Company of Louisiana, less royalties of \$1571.60, as shown by the Master's report

\$11,001.25

(b) Against the Pure Oil Operating Co. and the Gulf Refining Company of Louisiana, in solido, and each of the royalty claimants of the Gulf Refining Company of Louisiana, in solido with said companies, for the amount paid each of said royalty claimants, as shown by the Master's report, aggregating \$ 1,571.60

(c) Against the Standard Oil Co. of Louisiana and the Pure Oil Operating Co., in solido, for the amount of oil produced by the Pure Oil Operating Co., and delivered by the Pure Oil Operating Co. to the Standard Oil Co. of Louisiana, less royalties of \$8,568.28, all as shown by the Master's report, amounting to the sum of \$59,976.70

(d) Against the Standard Oil Company of Louisiana and the Pure Oil Operating Co., in solido, and each of the royalty claimants of the Standard Oil Company of Louisiana, in solido with said companies, for the amount paid to each of said royalty claimants, as shown by the Master's report, aggregating \$ 8,568.28

Said sums aggregating \$81,117.83, being the total value of the oil extracted and removed by defendants, as shown by the Master's report.

79 Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

80 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,

vs. No. 1168 In Equity.

W. H. Matthews, Mrs. Lydia M. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Number Six (6) of Section Ten (10) in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, containing Thirty-one and sixty-seven hundredths (31.67) acres, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana, be

and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the mineral location made by defendants, W. H. Matthews and Lydia Hanszen, recorded April 28, 1910, in Book 59, page 369, and the lease made by said locators April 30, 1910, recorded in Book 59, page 387, to E. H. Jennings and transfer of said lease by E. H. Jennings, January 6, 1911, to the Pure Oil Operating Company, recorded in Book 66, page 65, said instruments having been recorded on the Conveyance Records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and, to that extent, the said mineral locations and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, W. H. Matthews, Mrs. Lydia H. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up

any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, in solido, and the said
82 defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eleven Thousand Four Hundred and One and 59/100 (\$11,401.59) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Eighty-nine and 35/100 (\$589.35) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Sam W. Mason in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together

with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and F. A. Leonard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

83 XI. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and W. H. Matthews, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Pure Oil Operating Company, the Gulf Refining Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred

and Ninety-six and 45/100 (\$196.45) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thousand Two Hundred and Thirteen and 13/100 (3,213.13) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid

XIV. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana, and F. A. Leonard, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and Seventy-one and 5/100 (\$1,071.05) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XV. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Dillard P. Eubanks, in solido, and the said defendants are hereby condemned and
 84 ordered to pay to plaintiff, the full sum of One
 Thousand and Seventy-one and 99/100 (\$1071.
 99) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVI. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and W. H. Matthews, in solido, and the said defendants are hereby condemned and or-

dered to pay to plaintiff, the full sum of One Thousand and Seventy-one and 5/100 (\$1,071.05) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and the Natalie Oil Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and Forty-two and 53/100 (\$242.53) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVIII. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eight Hundred and Twenty-eight and 48/100 (\$828.48) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIX. That the United States of America do have and recover of the Pure Oil Operating Company, the Standard Oil Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand and Seventy-one and 5/100 (\$1,071.05) Dollars, together with five per cent per annum interest thereon
85 from January 11, 1919, until paid.

XX. That the rights of the Standard Oil Company of Louisiana, the Gulf Refining Company of Louisiana and the Pure Oil Operating Company against each other and

against the several persons to whom royalties were paid, by them, be reserved in accordance with the recommendations set forth in the Master's report.

XXI. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XXII. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XXIII. That pending delivery thereof to the United States of America John H. Eastham a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentali-

ties thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Ten Thousand (\$10,000) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as Receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XXIV. That the rights of the Standard Oil Company of Louisiana against its warrantors be, and the same are hereby, reserved.

87 Thus done, read and signed in open Court this
4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.
B

88 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

v. No. 1168, In Equity.

W. H. Matthews, et al.

To the Honorable, the Judge of the District Court of the
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States
of America, plaintiff in the above numbered and entitled
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final de-
cree in said cause, and that in said decree there was, in
part, error greatly to the prejudice and injury of plain-
tiff, as will more fully appear by the assignment of errors
filed herewith. Plaintiff desires to take an appeal from
said decree to the United States Circuit Court of Appeals
of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed
to plaintiff in this cause from this Court to the United
States Circuit Court of Appeals for the Fifth Circuit,

and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

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ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

Filed Jan. 3, 1920.

90 ASSIGNMENT OF ERRORS ON PLAINTIFF'S
APPEAL.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

1.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Pure Oil Operating Company for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated respectively December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said wells were drilled after the issuance of both of said withdrawal orders, in violation thereof, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said wells.

III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the wells in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said wells be deducted and excluded from any allowance that may be made defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Appeal, order allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

92 In the District Court of the United States, for
The Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1168, In Equity.

W. H. Matthews, et al.
Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

All the defendants feeling themselves aggrieved by the
decree made and entered in this cause on the 12th day of
August, 1919, do hereby appeal from said decree to the
Circuit Court of Appeals for the Fifth Circuit for the
reasons specified in the assignment of errors, which is
filed herewith, and now pray that their appeal be allowed
and that citation issue as provided by law, and that a
transcript of the record, proceedings and papers on which
said decree was based, duly authenticated, may be sent
to the said United States Circuit Court of Appeals for
the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper or-
der touching the security to be required of them to per-
fect said appeal be made.

THIGPEN & HEROLD,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed upon the defendants giving bond as required by law in the sum of Two Thousand Dollars.

RUFUS E. FOSTER,

United States District Judge.

Jan. 10/1920.

Indorsed: Motion & Order for Appeal. Filed Jan. 12, 1920.

B.

93

BOND ON APPEAL.

In the District Court of the United States, for the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1168, In Equity.

W. H. Matthews, et al.

Defendants.

Know all men by these presents:

That we, W. H. Matthews, Lydia H. McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubanks, Natalie Oil Co., Pure Oil Operating Co., Gulf Refining Co. of La., and Standard Oil Co. of La., as principal, and the National Surety Co., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the

full sum of Two Thousand Dollars, for the payment of which well and truly to be made, we hereby bind ourselves our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 5th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and W. H. Matthews, et al were defendants, numbered on the Equity Docket 1168, a decree was rendered and signed against the said W. H. Matthews, et al, and the said W. H. Matthews, et al having obtained an appeal to the United States Circuit Court, of Appeals for the Fifth Circuit;

Now if the said W. H. Matthews, et al shall prosecute such appeal to effect and answer all damages and costs if they fail to make their pleas good, then the above obligation to be void; otherwise to remain in full force and effect.

94

W. H. MATTHEWS,
By S. L. HEROLD, Atty.
LYDIA H. McMULLEN,
By S. L. HEROLD, Atty.
J. A. McMULLEN,
By S. L. HEROLD, Atty.
F. A. LEONARD,
By S. L. HEROLD, Atty.
SAM W. MASON,
By S. L. HEROLD, Atty.

H. EARL BARNES,
 By S. L. HEROLD, Atty.
 DILLARD P. EUBANKS,
 By S. L. HEROLD, Atty.
 NATALIE OIL CO.
 By S. L. HEROLD, Atty.
 PURE OIL OPERATING CO.
 By S. L. HEROLD, Atty.
 GULF REFINING CO. OF LA.
 By S. L. HEROLD, Atty.
 STANDARD OIL CO. OF LA.
 By J. C. PUGH,
 S. L. H. Atty.
 NATIONAL SURETY CO.
 By MERIWETHER-MAYO INSUR-
 ANCE AGENCY,
 By W. T. MAYO, Vice Pres.
 Attys. in fact.

Approved:

RUFUS E. FOSTER,
 U. S. Dist. Judge.

Indorsed: Appeal Bond. Filed Jan. 12, 1920.
 B.

95 In the District Court of the United States for
the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1168, In Equity.

W. H. Matthews, et al,

Defendant.

And now, on this the 10th day of January, 1920, come all the defendants, by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, is erroneous and unjust to the defendants; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 28th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

96

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant Pure Oil Operating Company, the amounts paid to its co-defendants as royalties.

Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Pure Oil Operating Company, in addition to the value of all the oil extracted from the property, less cost of production.

Tenth.

That the Court erred in condemning defendants Gulf Refining Co. of Louisiana and Standard Oil Co. of Louisiana for the value of the oil purchased by them respectively from their co-defendants.

Eleventh.

That the Court erred in holding the mere purchaser of oil produced and reduced to possession by the bona fide possessor of the land, by reason of such purchase, to the plaintiff because adjudged the owner of the land from wells on which such oil had been produced.

97 Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed: Assignment of Errors. Filed Jan. 10, 1920.
B.

STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

v.

No. 1168.

W. H. Matthews, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1170, and 1171, were consolidated in the District Court for trial with the case entitled United States v. Sam W. Mason, et al, No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States vs Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled *United States v. Sam W. Mason, et al*, No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by
99 plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Motion to dismiss on behalf of the Gulf Refining Company of Louisiana.
3. Answer of W. H. Matthews, et al.
4. Amended Answer of W. H. Matthews, et al.
5. Plaintiff's reply to defendants set off and counter-claim.

6. Plaintiff's amended reply to defendants setoff and counterclaim.

7. Plaintiff's reply to setoff and counterclaim asserted by Pure Oil Operating Company in amended answer.

8. Answer of the Standard Oil Company of Louisiana, and bonds and exhibits thereto annexed.

9. Interrogatories propounded by plaintiff to Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Co. of Louisiana.

10. Motion of Standard Oil Company of Louisiana to strike out interrogatories, Nos. 25 and 26.

11. Answer of Standard Oil Company of Louisiana to interrogatories.

12. Answer of Pure Oil Operating Company to interrogatories.

13. Answer of Gulf Refining Company of Louisiana to interrogatories.

14. Motion to dismiss filed by the Standard Oil Company of Louisiana.

100 15. Order of Court overruling motion to dismiss and sustaining motion to strike out certain interrogatories.

16. Order appointing E. H. Randolph, Special Master in Chancery.

17. Pages 1 and 2 of Statement of James W. Neal, Special Agent of the General Land Office, marked plain-

tiff's J, showing quantity and value of oil produced, royalties paid and costs of drilling and operating the wells, together with all other information given in said statement.

18. Exceptions of Standard Oil Company of Louisiana to Master's report.

19. Exceptions of W. H. Matthews, et al, to Master's report.

20. Exceptions of Pure Oil Operating Company to Master's report

21. Exceptions of Gulf Refining Company of Louisiana to Master's report.

22. Plaintiff's exceptions to Master's report.

23. Final decree.

24. Plaintiff's petition for appeal, order allowing same and assignment of errors.

25. Defendants' petition for appeal, order allowing same and assignment of errors, and bond on appeal

26. This stipulation.

Thus done and signed this 12 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

J. C. PUGH,
THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

101

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one-hundred pages contain and form a full, true and correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein the United States of America is plaintiff and W. H. Matthews, et al are defendants, No. 1168 in Equity on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on this the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk,
United States District Court,
Western District of Louisiana.

Citation omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3545.

W. H. MATTHEWS et als.
versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,
versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western
District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.
Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3545.

W. H. MATTHEWS et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, W. H. Matthews, Lydia Hanszen McMullen, J. A. McMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation

issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

Solicitors for said Appellants.

Order.

Let the foregoing petition be granted and the appeal be allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of One Hundred and Twenty Thousand Dollars (\$120,000.00).

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Pure Oil Operating Company, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in condemning defendants Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana for the value of the oil purchased by them, respectively, from their co-defendants.

Sixteenth.

The Court erred in holding the mere purchaser of oil produced and reduced to possession by the actual possessor of the land to be liable to plaintiff by reason of such purchase because plaintiff may have been herein adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

W. H. MATTHEWS, Mrs. LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, W. H. Matthews, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, as principal, and National Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, appellee, in the above numbered and entitled cause in the full sum of One Hundred and Twenty Thousand (\$120,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, La., on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court, wherein the United States of America was appellee and cross-appellant and W. H. Matthews, Mrs. Lydia H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3545, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below, or any of them, with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said W. H. Matthews, Mrs. H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said W. H. Matthews, Mrs. Lydia H. MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) W. H. MATTHEWS,
By S. L. HEROLD,
Atty.

(Signed) MRS. LYDIA HANSZEN MACMULLEN,
By S. L. HEROLD,
Atty.

(Signed) J. A. MACMULLEN,
By S. L. HEROLD,
Atty.

(Signed) F. A. LEONARD,
By S. L. HEROLD,
Atty.

(Signed) SAM W. MASON,
By S. L. HEROLD,
Atty.

(Signed) H. EARL BARNES,
By S. L. HEROLD,
Atty.

(Signed) DILLARD P. EUBANK,
By S. L. HEROLD,
Atty.

(Signed) NATALIE OIL COMPANY,
By S. L. HEROLD,
Atty.

(Signed) GULF REFINING COMPANY OF
LOUISIANA,
By S. L. HEROLD,
Atty.

(Signed) STANDARD OIL COMPANY OF
LOUISIANA,
By S. L. HEROLD,
Atty.

(Signed) PURE OIL OPERATING COMPANY,
By S. L. HEROLD,
Atty.

(Signed) NATIONAL SURETY COMPANY,
By LOUIS COIRON,
Res. Vice-President.

Countersigned by
 (Signed) LOUIS VALE,
Res. Asst. Secty.

[SEAL.]

Approved this 7th day of June, 1921.
 (Signed)

R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 121 to 130 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3545, wherein W. H. Matthews and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 120, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA :

The President of the United States to the United States of America,
 Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to — sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein W. H. Matthews, Lydia Hanszen MacMullen, J. A. MacMullen, F. A. Leonard, Sam W. Mason, H. Earl Barnes, Dillard P. Eubank, Natalie Oil Company, Pure Oil Operating Company, Gulf Refining

Company of Louisiana, and Standard Oil Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3545 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said W. H. Matthews and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

[Endorsed:] No. 3545. United States Circuit Court of Appeals, Fifth Circuit. W. H. Matthews et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Endorsed on cover: File No. 28,351. U. S. Circuit Court Appeals, 5th Circuit. Term No. 396. W. H. Matthews, Lydia Hansen MacMullen, J. A. MacMullen et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,351.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1922

No. 115

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN,
ET AL., APPELLANTS,

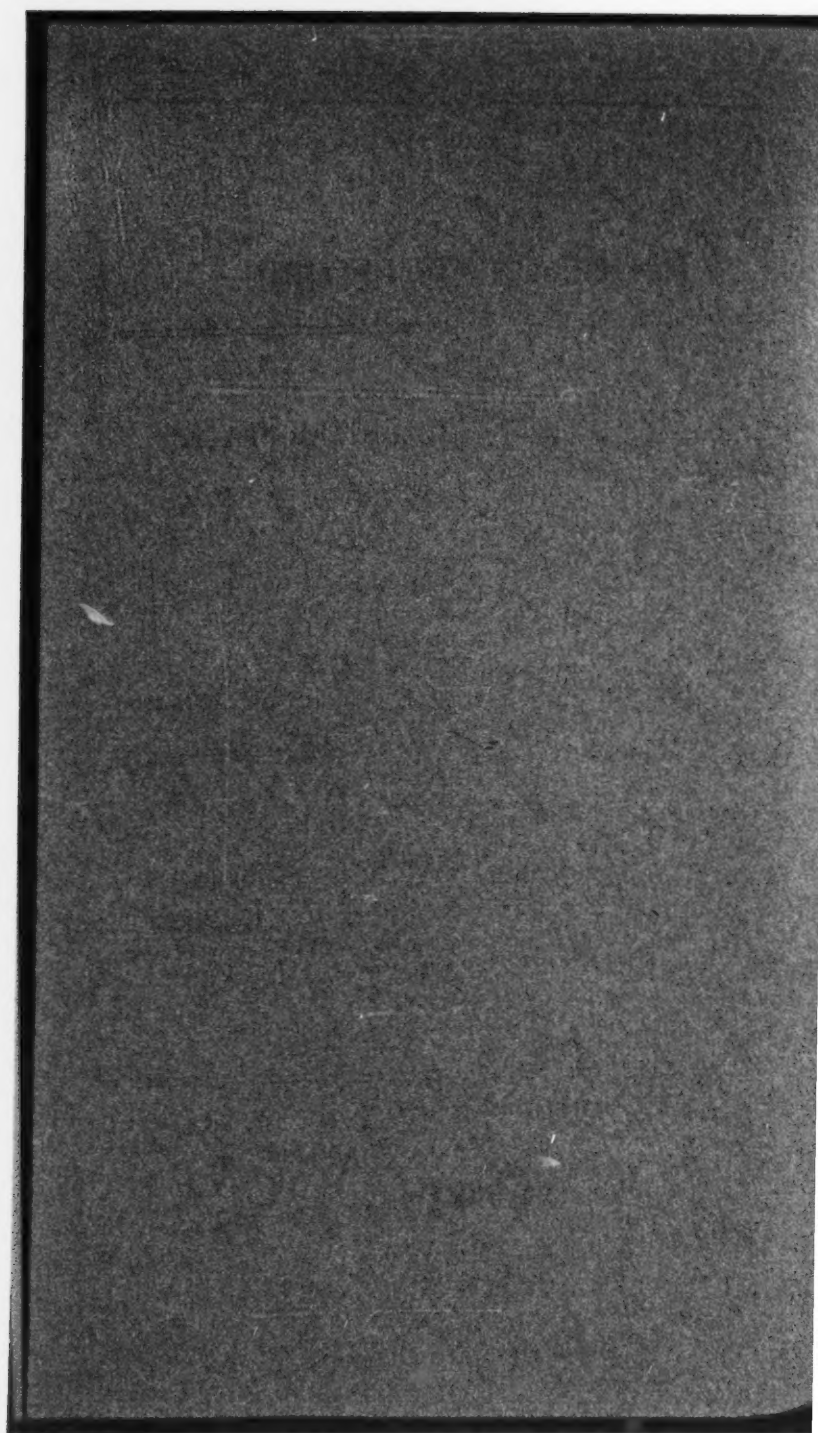
vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JULY 2, 1931

(28,352)



(28,352)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 397.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN,
ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA :

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, towit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3546, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,
versus No. 1170 In Equity.

D. P. EUBANK, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendants, and Cross Appeal taken by the
Plaintiff, to the United States Circuit Court of Ap-
peals, Fifth Circuit, New Orleans, Louisiana.

1 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1170, In Equity.

Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana, Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert
A. Hunter, Special Assistant to the Attorney General,
acting herein under the direction and by the authority of

the Attorney General of the United States, brings this bill of complaint against Dillard P. Eubank, John B. Files, citizens of Louisiana and residents of the City of Shreveport, in the Western District of said State; Eugene Hansen, a citizen of Texas and a resident of the City of Dallas, in the Northern District of said State; T. D. Starnes, J. L. Urquhart, citizens of Texas and residents of the City of Greenville, in the Northern District of said State; and the Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which had theretofore been surveyed and was known as the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section Five (5) Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, together with a strip of land lying between the traverse line of said Lots and the mean high-water line of 1812 and 1839 of James Bayou, as shown by a plat of survey approved March 28, 1917, by Clay
2 Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of

4

any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph 3 I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Gibbs No. 1, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdrawal said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, were extracted therefrom under the color of an illegal

mineral location made by one J. C. Gibbs (now deceased) pretending to act under the placer mining laws of the United States, which pretended location was recorded April 18, 1910, in Book 59, page 338, of the Conveyance Records of Caddo Parish, Louisiana. That said pretended mineral location embraced eleven and ninety-four hundredths (11.94) acres, and is in words and figures as follows:

J. C. Gibbs
to Notice of Mining Location.
The Public.

To whom it may concern:

Notice is hereby given that the undersigned, a citizen of the United States, over the age of twenty-one years, having complied with the requirement of Chapter VI, of Title 32 of the Revised Statutes of the United States, and the local mining laws, rules and regulations, concerning the location under the placer mining laws of the United States, containing petroleum or other mineral oil having located 11.94 acres of land located in Caddo Parish, Louisiana, described as follows:

Beginning 1980 ft. south and 660 ft. east of NW corner of NE $\frac{1}{4}$ Section 5, T. 20 N. R. 16 thence south 53° E. 595 ft., thence south 59° 33' E. 227.5 ft.; thence South 53° 20' E. 317 ft.; thence east 90 ft.; thence north 49° 10' E. 322.5 ft.; thence north 7°20' E. 453.5 ft.; thence west 1320 ft. to place of beginning, and I hereby declare my intention of complying with the law relative to working and holding the same. A survey having been
4 made and marked at each corner and a notice
 posted at every corner thereof in a conspicuous
place.

Witness my hand this 31st day of March, 1910.
(Signed) J. C. GIBBS

Witness:

JIM TODD,
JOE MURPHY.

That the said Gibbs himself made no effort to explore said land, or drill for oil or gas thereon, but on April 2, 1910, executed a mineral lease thereof to defendant, Gulf Refining Company of Louisiana, as per act recorded in Conveyance Book 59, page 295, of the records of said Parish and State.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and lease, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and defendant, Gulf Refining Company of Louisiana drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it has appropriated to its own use.

That the said Gulf Refining Company of Louisiana paid to the other defendants herein, who, plaintiff alleges, acquired an interest in the mineral location of the said J. C. Gibbs, certain sums as royalties, the amount of which is to the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from said land, appropriated as aforesaid, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting
5 claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location made on March 31, 1910, by J. C. Gibbs, as per act recorded in Conveyance Book 59, page 338, and the lease made by the said J. C. Gibbs to the Gulf Refining Company of Louisiana, on April 2, 1910, by act recorded in Conveyance Book 59, page 295, of the records of Caddo Parish, Louisiana, be declared null and void, and that same be cancelled and annulled,

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land,
 6 or any part thereof, and from creating any cloud upon the plaintiff's title to same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil, or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease or same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to Dillard P. Eubank and John B. Files, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana, and

7 served as provided by law, directing said defendants to appear and answer to this cause on a day certain to be designated by this Court.

ROBERT A. HUNTER,
Special Assistant to the At-
torney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and
says:

That he is a Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28 day of July,
1917.

C. W. CALHEATT,
Deputy Clerk, U. S. District Court,
Northern District of California.

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana are not inhabitants of the Western District of Louisiana, and are domiciled outside of said District,

It is, therefore, ordered that the said absent defendants be, and they are hereby directed to appear, and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants respectively, wherever found. This August 8th, 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.
B.

9 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1170, In Equity.
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana, Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

The defendant, T. D. Starnes, now and at all times
hereinafter saving and reserving to himself all manner
of benefit or advantage all exception or otherwise that
may be had or taken to the many errors, uncertainties and
imperfections in the bill of complaint herein for answer
thereto, or to so much thereof as defendant is advised is
material or necessary for him to answer, says:

1.

Defendant, T. D. Starnes, neither admits nor denies
the allegations set forth in paragraph one of the bill of
complaint herein.

2.

Defendant, T. D. Starnes, neither admits nor denies the
allegations complained of in paragraph two of plaintiff's
bill of complaint, but he says, upon information and be-
lief, that the order referred to therein was not in force
and effect until the 2nd day of July, 1910, at
which said time defendant's original grantor had
located said land therein described in the 18th

day of April, 1910, and prior to the time when said lands were withdrawn by the President of the United States from location.

3.

In answer to the third paragraph of plaintiff's bill of complaint the defendant, T. D. Starnes, neither admits nor denies the allegations therein contained, except as set out in his answer to the second paragraph of the bill of complaint herein.

4.

In answer to the fourth paragraph of plaintiff's bill of complaint, the defendant, T. D. Starnes, says, upon information and belief that J. C. Gibbs, the original grantee from the plaintiff, was a bona fide occupant of the lands described in paragraph one of plaintiff's bill of complaint; that he is not advised as to whether or not actual prosecution of the work, leading to the discovery of oil and gas, had begun on the 2nd day of July, 1910, as alleged by plaintiff in paragraph two of said bill of complaint.

5.

In answer to the allegations contained in the fifth paragraph of said bill of complaint, the defendant, T. D. Starnes, admits that portion of same, setting out the location of the land in controversy by J. C. Gibbs on the 31st day of March, 1910; that the defendant, Starnes, is not advised at what date an exploration for oil or gas was begun on said lands, but, upon information and belief, says that the Gulf Refining Company, grantee of J. C. Gibbs, immediately, or soon after the 2nd day of

April, 1910, began exploration for oil and gas on said lands described by the plaintiff in paragraph one of its bill of complaint. Defendant, Starnes, denies that he received any very considerable amount of money in the way of royalties; that he received at two different times small amounts from the Gulf Refining Company of Louisiana, the amount of which he does not now remember, but, upon information and belief, he says that said sum was less than \$100.00.

6.

In answer to paragraph six of plaintiff's bill of complaint, defendant, Starnes, denies that he is unlawfully trespassing upon the lands described in plaintiff's bill of complaint, but admits that he is asserting title or interest in said lands.

7.

In answer to paragraph seven of plaintiff's bill of complaint, defendant, T. D. Starnes, says that he is not advised as to the proceeds realized from the sale of oil taken from said lands by the Gulf Refining Company of Louisiana, but he does say that he received a very small sum in the way of royalties—\$100.00 or less.

For all of which reasons defendant, T. D. Starnes, says that the plaintiff is not entitled to the relief sought.

Wherefore, he prays that plaintiff take nothing by this suit, that said bill of complaint be dismissed and that he go hence without day and recover his costs.

T. D. STARNES,

Attorneys for Defendant, T.
D. Starnes.

Indorsed:—Original Answer of Defendant, T. D. Starnes. Filed Sep. 26, 1917.

12 In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,
vs. No. 1170 In Equity.
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana, Defendants.

The defendant, J. L. Urquhart, now and at all times hereinafter excepting and reserving to himself all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in the bill of complaint herein for answer thereto, or to so much thereof as defendant is advised is material or necessary for him to answer, says:

1.

Defendant, J. L. Urquhart, neither admits nor denies the allegations set forth in paragraph one of the bill of complaint herein.

2.

Defendant, J. L. Urquhart, neither admits nor denies the allegations complained of in paragraph two of plaintiff's bill of complaint, but he says, on information and belief, that the order referred to therein was not in force

and effect until the 2nd day of July, 1910, at which said time defendant's original grantor had located said land therein described on the 18th day of April, 1910, and prior to the time when said lands were withdrawn
13 by the President of the United States from location,

3.

In answer to the third paragraph of Plaintiff's bill of complaint, the defendant, J. L. Urquhart, neither admits nor denies the allegations therein contained, except as set out in his answer to the second paragraph of the bill of complaint herein.

4.

In answer to the fourth paragraph of plaintiff's bill of complaint, the defendant, J. L. Urquhart, says, upon information and belief, that H. C. Gibbs, the original grantee from the plaintiff, was a bona fide occupant of the lands described in paragraph one of plaintiff's bill of complaint; that he is not advised as to whether or not actual prosecution of the work leading to the discovery of oil had begun on the 2nd day of July, 1910, as alleged by plaintiff in paragraph two of its bill of complaint.

5.

In answer to the allegations contained in the fifth paragraph of said bill of complaint, the defendant, J. L. Urquhart, admits that portion of same, setting out the location of the land in controversy by J. C. Gibbs on the 31st day of March, 1910; that defendant, Urquhart, is not advised at what date an exploration for oil or gas was begun on said lands, but, upon information and belief, says that the Gulf Refining Company, grantee of J. C. Gibbs, immediately or soon after the 2nd day of April,

1910, began exploration for oil and gas on said lands described by the plaintiff in paragraph one of its bill of complaint. The defendant, Urquhart, denies that he received any very considerable amount of money in the way of royalties; that he received at two different times small amounts from the Gulf Refining Company of Louisiana, the amount of which he does not now remember, but, upon information and belief, he says that said sum was less than \$200.00.

6.

In answer to paragraph six of plaintiff's bill of complaint, defendant, J. L. Urquhart, denies that he is unlawfully trespassing upon the lands described in plaintiff's bill of complaint, but admits that he is asserting title or interest in said lands.

7.

In answer to paragraph seven of plaintiff's bill of complaint, defendant, J. L. Urquhart, says that he is not advised as to the proceeds realized from the sale of oil taken from said lands by the Gulf Refining Company of Louisiana, but he does say that he received a very small sum in the way of royalties, towit: \$200.00 or less.

For all of which reasons defendant, J. L. Urquhart, says that the plaintiff is not entitled to the relief sought.

Wherefore, he prays that plaintiff take nothing by this suit; that said bill of complaint be dismissed, and that he go hence without day and recover his costs.

J. L. URQUHART,
SHERILL & STARNES,

Attorneys for Defendant, J. L.
Urquhart.

Indorsed:—Defendant, Urquhart's Original Answer.
Filed Sept. 29, 1917.

15 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1170 In Equity.
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana, Defendants.

The joint and several answer of all the defendants in
the above entitled and numbered cause.

And now come all of said defendants, and answer the
bill of complaint as follows:

I.

The ownership by the United States, on and before De-
cember 15th, 1908, of the South Half of the Northeast Quar-
ter of Section Five (5), township and range referred to,
together with a strip of land lying between the traverse
line of what is now designated as Lots Three and Four,
and the mean high water line of 1812 and 1839 of James
Bayou, is admitted; but it is denied that plaintiff is now
the owner thereof or entitled to the possession of said
land or of the minerals therein contained.

II.

It is denied that the presidential withdrawal of Decem-
ber 15th, 1908, affected the right of any duly qualified

citizen to locate said property under the mining laws of the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew there-

16 after all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for oil and gas and did drill the well referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said well was drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority or in bad faith or to the injury of plaintiff.

IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by J. C. Gibbs; but they deny that such location was a pretended
17 one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Defendants admit the execution of lease by said locator to the Gulf Refining Company of Louisiana, as recorded in Conveyance Book 59, page 295, of the records of Caddo Parish, Louisiana; and show that under said lease, lawfully made and entered into, said lessee proceeded in good faith and according to the terms of its said contract to drill upon said location, commencing such drilling on the 24th day of April, 1910, and completing such effort with the discovery of oil in paying quantities by the bringing in on the 17th day of June, 1910, of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through said well, drilled as aforesaid under said mineral location, a large quantity of oil which, after delivery to the mineral locator of his proportion as royalty as provided in said lease, the Gulf Refining Company of Louisiana has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment of work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

18

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2d, 1910, prior to which date (to-wit, on June 17th, 1910) said locator, J. C. Gibbs, through his lessee, Gulf Refining Company of Louisiana, had made a discovery on said tract, of oil in paying quantities, under the location made by him on March 31st, 1910; all of which defendants allege to be true, and plead the same in bar to the bill, and pray the

judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

IX.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locator, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, seven thousand one hundred and thirty & 93/100 (7130.93) barrels of oil of the market value of Four Thousand Eight Hundred and Six & 43/100 (\$4,806.43) Dollars; of which amount one thousand four hundred and eighty-five & 46/100 (1,485.46) barrels of oil of the market value of One Thousand and One & 15/100 (\$1,001.15) Dollars was delivered to said locator under the stipulations of said lease, and five thousand six hundred and forty-five & 47/100 (5,645.47) barrels of oil of the market value of Three Thousand Eight Hundred and Five & 28/100 (\$3,805.28) Dollars (the remainder), retained by said lessee for its own use as owner—all of which it had the right to do.

X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal or-

der should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of J. C. Gibbs was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the well above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

XI.

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, therefrom, and that said well was drilled in good faith

and under such belief of right. And defendants show that in the event the Court should hold that plaintiff is the owner of said land, that defendants are entitled to be reimbursed the entire cost of drilling, equipping and operating said well before they can be held liable, if any

20 such liability there be, for any oil extracted therefrom. And defendants show that the actual cost of the drilling and equipping of said well was Nine Thousand Three Hundred and Eighteen & 31/100 (\$9,318.31) Dollars and that the actual cost of the operation of said well to the 31st day of July, 1917, was Four Thousand Three Hundred and Ten & 63/100 (\$4,310.63) Dollars, making a total expense in the production of said oil by the drilling, equipping and operation of said well of Thirteen Thousand Six Hundred and Twenty-eight & 94/100 (\$13,628.94) Dollars.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is, in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that they may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendants the entire cost of drilling and equipping said well and of the operations thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendants in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said defendants and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,
THIGPEN & HEROLD,
& BARRETT & FILES,
Solicitors for Defendants.

Indorsed:—Answer. Filed Sept. 29, 1917.

B.

21 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1170, In Equity.
Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitors, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even if
22 the said defendants are entitled to a set off, or
 counterclaim, in any amount, which is denied,
 the sum claimed by the defendants is excessive
and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,

Special Assistant to the At-
torney General.

Indorsed:—Plaintiff's Reply to Defendants' Set off and Counterclaim. Filed Oct. 5, 1917.

B.

23

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding:—Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1170, In Equity.

Dillard P. Eubank, et al.

This cause came on this day to be heard upon the Pleas filed by defendants—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the complainant and Mr. S. L. Herold appearing for defendants. The matter was argued, submitted and taken under advisement by the Court.

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1170, In Equity.
Dillard P. Eubank, et al.

In this cause, which cause had heretofore been argued and submitted, on the Pleas filed by defendants, counsel for either side being now present in open Court, decision is orally rendered, overruling the said Pleas, with the right reserved to defendants to renew said pleas upon the trial of the case upon its merits.

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(INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO THE GULF REFINING
COMPANY OF LOUISIANA).

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Gibbs No. 1. State when said well was commenced and when completed.

(2).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy was 7,130.97 barrels, of the value of \$4,806.43. State whether or not the production of said well as given in your answer is exact, or estimative.

(3).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

25

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total

production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(7).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the well in suit.

(8).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.

(9).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

26

(10).

What are the principal products manufactured from petroleum or crude oil?

(11).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(12).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b) the profits made by it from the manufacture and sale of the products of said crude oil.

(13).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(14).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether

the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(15).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other defendants herein out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalties were paid and the amounts paid to each.

ROBERT A. HUNTER,

Special Assistant to the Attorney General.

Indorsed:—Interrogatories & Interrogatories to be Answered by the Gulf Refining Company of Louisiana. Filed Feb. 20, 1918.

B.

28 In the District Court of the United States for
 the Western District of Louisiana.

United States of America, Complainant,
 vs. No. 1170 In Equity.
 Dillard P. Eubank, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third Vice-President, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Gibbs No. 1 was commenced on April 24th, 1910, and completed on June 17th, 1910.

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to July 31st, 1917, are exact.

To Interrogatory No. 3, defendant answers:

(a) The total production from the said well to July 31st, 1917, was 7,130.93 barrels, of the value of \$4,806.43;

(b) From July 31st, 1917, to January 1st, 1918, None; well quit producing in July, 1913.

To Interrogatory No. 4, defendant answers:

The well was operated by itself.

To Interrogatory No. 5, defendant answers:

Yes, a record was kept of daily production of the oil from said well.

To Interrogatory No. 6, defendant answers:

The production as given above is exact.

To Interrogatory No. 7, defendant answers:

L. E. Delcuze, Auditor of the Gulf Refining Company
of Louisiana, Gulf Pipe Line Company Building,
29 Houston, Texas.

To Interrogatory No. 8, defendant answers:

The production from said land up to January 1st, 1918, was 7,130.93 barrels of oil, of the value of \$4,806.43. The value as given is exact and is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 9, defendants answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil; the oil produced by it was sold to the Gulf Pipe Line Company.

To Interrogatory No. 10, defendant answers:

Gasoline, kerosene and lubricating oils.

To Interrogatory No. 11, defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 12, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profit whatever from the sale of any or all of the crude oil extracted from the land in controversy; the expenses incurred by it in drilling, equipping and operating the said well being \$13,628.94;

the total receipts by it from the sale of said
oil plus pipage charge 5,519.52;

making a net loss to this defendant of \$8,109.42.

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 13, defendant answers:

The crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter company in the State of Texas.

30 To Interrogatory No. 14, defendant answers:

(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company;

(b) Made no profit;

(c) Delivery, as aforesaid, was made to the purchaser at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same. Of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 15, defendant answers:

There were delivered by the Gulf Refining Company of Louisiana, as royalty, to the other defendants herein, 1,485.46 barrels of oil, of the value of \$1,001.15, as follows, to-wit:

	Bbls.	Value.
J. L. Urquhart	297.10	200.21
T. D. Starnes	148.58	100.12
Eugene Hanszen	32.96	31.30
J. B. Files	445.67	300.38
D. P. Eubank	561.15	369.14

1,485.46 1,001.15

C. R. MINOR.

Sworn to and subscribed before me, on this the 15th day of March, 1918.

J. A. THIGPEN,

(Seal)

Notary Public in and for Caddo
Parish, Louisiana.

31 Indorsed:—Answer of Gulf Refining Company
of Louisiana to Interrogatories. Filed Apr. 20,
1918.
B.

32 United States District Court, Western District
of Louisiana.

United States

vs.

No. 1170.

Dillard P. Eubank, Et Al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,

Judge.

March 29, 1918.

Filed Mar. 29, 1918.

PLFF. K.

R. B. Cook, Stenographer.

No. 1170.

United States vs. D. P. Eubank, et al.

Suit No. 1170.

Statement of the Oil Run by the Gulf Refining Co. of
La. from September, 1910, to August, 1913, from
Land Embraced in Suit.

	Bbls.	Value.
Total oil run from September, 1910, to August, 1913, when well ceased to produce.....	7,130.93	\$4806.43

Division of Oil and Value.

J. L. Urquhart	297.10	200.21
T. D. Starnes	148.58	100.12
Eugene Hanszen	32.96	31.30
J. B. Files	445.67	300.38
D. P. Eubank	561.15	369.14

Total Royalty paid	1485.46	\$1001.15
Total retained by the Gulf Re- fining Co. as its share.....	5645.47	\$3805.28
Pipe Line earnings on oil run		713.09

Total.....		\$4518.37
Cost of drilling and equipping the well and operation of same from September, 1910, to August, 1913.....		\$13,628.94

The first work done on this claim was April 24, 1910, when the well in suit was begun.

Filed Jan. 21, 1919.

34 Gulf Refining Company of Louisiana.
Caddo Parish.

Statement Showing Pipe Runs from Gibbs Well No. 1.
From September, 1910, Through July, 1913.

Year. 1910.	Barrels.	Price.	Amount.
September	347.91	40c	139.16
October	281.28	40	112.50
November	267.56	42	112.37
December	235.44	42	98.87
Total	1,132.19		462.90
1911.			
January	158.89	44	69.90
February	225.31	44	99.14
March	79.20	44	34.85
March	80.16	50	40.08
April	236.22	50	118.10
May	222.98	55	122.64
June	78.55	55	43.20
June	139.52	60	83.70
July	230.25	60	138.13
August	211.21	60	126.72
September	69.32	60	41.59
September	142.20	62	88.15

40

October	225.68	62	139.91
November	158.28	62	98.12
December	228.88	62	141.90

Total	2,486.65		1,386.15
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1912.

January	89.49	65	58.17
January	83.62	67	56.02
January	50.38	69	34.75
February	157.75	72	113.57
March	233.12	72	167.85
April	83.55	72	60.15
April	84.31	75	63.22
May	158.93	75	119.20
May	83.96	77	64.64
June	153.53	77	118.21
July	74.20	77	57.12
July	82.71	80	66.16
August	228.59	80	182.86
September	147.35	80	117.87
October	216.36	80	173.07
November	147.28	83	122.24
December	71.70	83	59.50
December	161.62	91	147.07

Total	2,308.45		1,781.67
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1913.

January	142.55	93	132.57
February	198.40	98	194.43
April	222.90	98	218.45
March	139.66	98	136.88
May	178.54	98	174.98

June	160.46	98	157.26
July	161.13	1.00	161.14
Total	1,203.64		1,175.71
Grand Total	7,130.93		\$4,806.43
Plus pipage earnings on 7130.93 bbl. @ 10c. per bbl.			713.09
			<u>\$5,519.52</u>

35 Total Pipe Line Runs Divided as Follows:

Paid to	Barrels.	Value.
J. L. Urquhart	297.10	200.21
T. D. Starnes	148.58	100.12
Eugene Hanszen	32.96	31.30
J. B. Files	445.67	300.38
D. P. Eubank	561.15	369.14
Gulf Refining Co. of La....	5,645.47	3,805.28
	<u>7,130.93</u>	<u>\$4,806.43</u>

Division of Oil.

From September 1910 to November 1, 1912.

J. L. Urquhart	1/3 of 1/8
T. D. Starnes	1/6 of 1/8
J. B. Files	1/2 of 1/8
D. P. Eubank	8.33-1/3
Gulf Refining Co. of La.	79.16-2/3

From November 1, 1912, Through July, 1913.

J. L. Urquhart	1/3 of 1/8
T. D. Starnes	1/6 of 1/8
J. B. Files	1/2 of 1/8

D. P. Eubank	3/4 of 1/12
Eugene Hanszen	1/4 of 1/12
Gulf Refining Co. of La.	79.16-2/3
2—March 21, 1918—5.	

Gulf Refining Company of Louisiana,
Caddo Parish.

Statement Showing Cost of Drilling and Equipping
Operating and Total Production and Value of Gibbs
No. 1 to December 31, 1917.

Commenced Drilling—April 24, 1910.
Completed June 17th, 1910.

Expenditures.

Drilling and equipping No. 1..	9,318.31	
Operating expense to December		
31, 1917	4,310.63	
	<hr/>	13,628.94

Oil Production (Gross).

7130.93 bbls. @ various prices,		
plus pipage	5,519.52	5,519.52
	<hr/>	<hr/>
Balance to pay out		8,109.42

Note:—Quit producing July, 1913.
2—March 21, 1918—5.

36 In the District Court of the United States, for
 the Western District of Louisiana.

United States of America, Plaintiff,
 vs. No. 1170, In Equity.
Dillard P. Eubank, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that time so withdrawn.

2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered, as to the liability which the Master certified as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

3.

That the Master refused to allow the expenditures incurred in the production of oil on said property as off-

sets against the total amount of oil produced; whereas same should be allowed, thereby eliminating this defendant from any liability.

4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendant, Gulf
Refining Company of Louisiana.

Indorsed:—Exceptions of Gulf Refining Company of Louisiana to the Report of the Special Master. Filed Jan. 30, 1919.

B.

38 In the District Court of the United States, for
 the Western District of Louisiana.

 United States of America, Plaintiff,
 vs. No. 1170, In Equity.
 Dillard P. Eubank, et al., Defendants.

Now comes Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes and J. L. Urquhart, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that time so withdrawn.

2.

That the Master has in said report stated and certified that these defendants should be condemned in a money judgment in the amounts of the royalties received by them from the Gulf Refining Company of Louisiana from the well on the property in controversy; whereas, he should have reported and certified that no money judgment should be rendered against them.

3.

That the said Master has in said report certified that these defendants should pay interest upon the amount

of judgment rendered against them, at the rate of five (5%) per cent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,
Solicitors for Defendants.

39 Indorsed:—Exceptions of Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes and J. L. Urquhart to the Report of the Special Master. Filed Jan. 30, 1919.

B.

40 In the District Court of the United States for the Western District of Louisiana.

United States of America,

vs. No. 1170, In Equity.

Dillard P. Eubank, Et Al.

Now into this Honorable Court comes the plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F 1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T," which said exhibits were by agreement of counsel (record p. 2) made a part of the record of this cause. This Court held in the said Mason case that the withdrawals included T. 20 N., Range 16 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

41 2. The mineral locations in this case were made March 3, 1910 (record 44, and answers of defendants to the bill of complaint). The testimony shows that no work leading to a discovery on the land embraced in the mineral location was begun until April 24, 1910 (record, pp. 44-45).

Plaintiff avers that the drilling of said wells and the removal of oil from the said land were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by

said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, (testimony of D. P. Eubank, record 46). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and, accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a) Against the Gulf Refining Co. of Louisiana for amount of production of oil from the land in controversy, less royalties paid out of the said production, all as shown by the Master's report in the sum of	\$3805.28
--	-----------

(b) Against the Gulf Refining Company of Louisiana and the several royalty claimants of the said Company for the amounts set opposite their names, each in solido with said Company, as shown by the Master's report, aggregating	\$1001.15
	<hr/>
	\$4806.43

42 Said sums aggregating \$4806.43, being total value of oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

43 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America,

vs.

No. 1170, In Equity.

Dillard P. Eubank, John B. Files, Eugene Hanszen, T.
D. Starnes, J. L. Urquhart, Gulf Refining Company
of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly;

II. That the land described in the bill of complaint, namely, the South half of the North-east quarter, Section

Five (5) in Township Twenty (20) North, of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said section, together with a strip of land lying between the traverse line of said lots and the mean high water mark of 1812 and 1839 of James Bayou, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or minerals laws of the United States.

III. That the mineral location made by J. C. Gibbs recorded April 18, 1910, in Book 59, page 338, and the lease made by the said J. C. Gibbs April 2, 1910, to the Gulf Refining Company of Louisiana, recorded in conveyance Book 59, page 295 of the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are declared null, void and held for naught insofar as
 44 the said mineral location and lease may include directly or indirectly the above described property, and, to that extent the said mineral location and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

B. That the said defendants, namely, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart and the Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and J. L. Urquhart, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and 21/100 (\$200.21) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and T. D. Starnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and 12/100 (\$100.12) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

45 VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and Eugene Hanszen, in solido, and the said defendants are hereby condemned and ordered to

pay to plaintiff, the full sum of Thirty-one and 30/100 (\$31.30) Dollars together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and John B. Files, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred (\$300.00) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-Nine and 14/100 (\$369.14) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the said defendants be and they are hereby ordered, directed, and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by such accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of

Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and
46 authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Hundred (\$500.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of this Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require

the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another Receiver or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

47 Indorsed:—Decree. Filed August 12, 1919.

48 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1170, In Equity.
Dillard P. Eubank, Et Al., Defendants,

The petition of all of the defendants in the above entitled and numbered cause represents:

1.

That they have been aggrieved by the decree rendered by Your Honor and signed on the.....day of August, 1919, wherein they are condemned in solido to pay to the plaintiff the sum of One Thousand and One and 15/100

(\$1,001.15) Dollars, together with five per cent per annum interest thereon from January 11th, 1919; and avers that error has been committed in the rendering in the rendering of the said decree in this, to-wit:

2.

That the Court erred in confirming the Master's Report, in which was recommended the decree as signed by Your Honor, condemning the Gulf Refining Company of Louisiana and its co-defendants in solido in the said sum of \$1,001.15, when according to the uncontradicted testimony and to the facts as stated in the Master's Report itself, there was but one well drilled on the property, the total value of the oil extracted from which was Four Thousand Eight Hundred and Six and 43/100 (\$4,806.43) Dollars, produced at a cost of Thirteen Thousand Six Hundred and Twenty-eight and 94/100 (\$13,628.94) Dollars; so that there was a net loss from the operation of the property and, consequently, no damage whatever so the Government.

Wherefore, petitioners pray for a hearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

THIGPEN & HEROLD,
Solicitors for Defendants.

49

ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,
United States District Judge.

August 4, 1919.

Indorsed: Petition for Rehearing. Recorded in Chancery Order Book, Vol. 5, Folio 668. Filed: August 13, 1919.

50 714. Chancery Order Book. Vol. 5.

United States District Court for the Western District of Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,
vs. No. 1170, In Equity.
Dillard P. Eubank, Et Al.

In this cause the Motion for Re-hearing which was heretofore filed, ~~on~~ on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. I. Herold, after argument, and consideration by the Court,

It is ordered, that this Motion be overruled.

51 In the District Court of the United States, for the Western District of Louisiana.

United States of America,
vs. No. 1170, In Equity.
Dillard P. Eubank, Et Al.

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S APPEAL.

In the District Court of the United States for the West-
ern District of Louisiana.

United States of America,
vs. No. 1170, In Equity.
Dillard P. Eubank, Et Al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order

was issued for the purpose of conserving the public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court further erred in allowing said counterclaim and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knowledge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the

oil extracted and removed from said land, as shown by
 the report of the Master in Chancery, or, in de-
 54 **fault of such relief**, that the cause be remanded
 to the District Court with instructions to enter
 a decree in favor of plaintiff for the full value of said
 oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of
 drilling and equipping said well be deducted and ex-
 cluded from any allowance that may be made to defend-
 ants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the
 said decree be affirmed.

ROBERT A. HUNTER,
 Special Assistant to the
 Attorney General.

Indorsed: Plaintiff's Petition for Appeal, Order Al-
 lowing Same, and Assignment of Errors. Filed Jan. 3,
 1920.

55 In the District Court of the United States, for
 the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1170, In Equity.

Dillard P. Eubank, Et Al., Defendants,

To the Honorable Judge of the District Court of the
 United States for the Western District of Louisiana,
 Sitting Within and for the Shreveport Division:

All the defendants in the above numbered cause,
 feeling themselves aggrieved by the decree made and en-
 tered in this cause on the 12th day of August, 1919, and

by the refusal of rehearing thereof on December 4th, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

THIGPEN & HEROLD,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Fifteen Hundred Dollars.

Jan. 10th, 1920.

RUFUS E. FOSTER,
United States District Judge.

Indorsed: Motion and Order for Appeal. Filed Jan. 12, 1920.

B.

56 SUPERSEDEAS BOND ON APPEAL.

In the District Court of the United States, for the
Western District of Louisiana.

vs. No. 1170, In Equity.

Dillard P. Eubank, Et Al., Defendants,

Know all men by these presents: That we, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Co. of La., as principals, and the American Surety Co. of New York, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Fifteen Hundred Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff, and Dillard P. Eubank, et al., were defendants, numbered on the Equity docket 1170, a decree was rendered and signed against the said Dillard P. Eubank, et al., and a rehearing thereof refused on Dec. 4th, 1919, and the said Dillard P. Eubank, et al., having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now if the said Dillard P. Eubank, et al., shall prosecute such appeal to effect and answer all damages and

costs if they fail to make their pleas good, then the above
 obligation to be void; otherwise to remain in
 57 full force and effect.

DILLARD P. EUBANK,
 By S. L. HEROLD, Atty.

JOHN B. FILES,
 By S. L. HEROLD, Atty.

EUGENE HANSZEN,
 By S. L. HEROLD, Atty.

T. D. STARNES,
 By S. L. HEROLD, Atty.

J. L. URQUHART,
 By S. L. HEROLD, Atty.

(Seal)

GULF REFINING CO. OF
 LA.
 By S. L. HEROLD, Atty.

AMERICAN SURETY CO.
 OF NEW YORK,
 By R. L. GAFFNEY,

Atty. in Fact.
 By J. G. TRICHEL.

Approved:

(Seal)

RUFUS E. FOSTER,
 U. S. District Judge.

B.

Indorsed:—Supersedeas Bond. Filed Jan. 12, 1920.

58 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1170, In Equity.
Dillard P. Eubank, Et Al., Defendants,

And now, on this the 10th day of January, 1920, come all of the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendants; and for specifications of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 18th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate

the property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

59

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.

Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them, which is denied) in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of all the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.

B.

60

STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,
vs.

No. 1170.

D. P. Eubank, Et Al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1168, and 1171, were consolidated in

the District Court for trial with the case entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral
 61 location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public

land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Original answer of T. D. Starnes.
3. Original answer of J. L. Urquhart.
4. Answer of all defendants.
5. Plaintiff's reply to set off and counterclaim.
6. Order of Court overruling pleas of defendants.
7. Interrogatories propounded by plaintiff to Gulf Refining Co. of Louisiana.
8. Answers of Gulf Refining Co. of Louisiana to interrogatories.
9. Order appointing E. H. Randolph Special Master in Chancery.
10. Pages 1 and 4 of statement of James W. Neal, Special Agent of the General Land Office, marked plaintiff's K, showing quantity and value of oil produced, royalties and costs of drilling and operating the well.

together with all other information given in said statement.

11. Exceptions of Gulf Refining Company of Louisiana to Master's report.

12. Exceptions of Dillard P. Eubank to Master's report.

13. Plaintiff's exceptions to Master's report.

14. Final decree.

15. Defendants' petition for rehearing.

16. Order of Court overruling defendants' petition for rehearing.

17. Plaintiff's petition for appeal, order allowing same and assignment of errors.

18. Petition of defendants for appeal, order allowing same and assignment of errors, and appeal bond.

19. This stipulation.

62 Thus done and signed this 12th day of May,
1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.
J. B. FILES,
THIGPEN & HEROLD,
Solicitors for Defendants.

Filed May 14, 1920.

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing sixty-two pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is plaintiff and D. P. Eubank, Et Al., are Defendants, No. 1170 in Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

W. B. LEE, Clerk,
United States District Court,
Western District of Louisiana.

(Seal)

Citations omitted from the printed record, being filed in the Original.

• • • • •

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3546.

DILLARD P. EUBANK et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western
District of Louisiana.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of *Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit*, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3546.

DILLARD P. EUBANK et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

Solicitors for said Appellants.

Order.

Let the foregoing petition be granted and the appeal be allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Seven Thousand and Two Hundred Dollars (\$7,200.00).

June 7, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3545.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specifications of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production

from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in not reversing the judgment of the District Court which had condemned defendants in solido in a sum greater than the difference between the value of the oil extracted from the property and the actual cost incurred, as found by the Master and the District Court, of the production of such oil.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3546.

DILLARD P. EUBANK, JOHN B. FILES, EUGENE HANSZEN, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana,
Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and the Gulf Refining Company of Louisiana, as principal, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause in the full sum of Seven Thousand Two Hundred (\$7,200.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant and Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and the Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3546, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Dillard P. Eubank, John B. Files, Eugene Hanszen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) DILLARD P. EUBANK,
By S. L. HEROLD,

Atty.

(Signed) JOHN B. FILES,
By S. L. HEROLD,

Atty.

(Signed) EUGENE HANSZEN,
By S. L. HEROLD,

Atty.

(Signed) T. D. STARNES,
By S. L. HEROLD,

Atty.

(Signed) J. L. URQUHART,
By S. L. HEROLD,

Atty.

(Signed) GULF REFINING COMPANY OF LA.,
By S. L. HEROLD,

Atty.

(Signed) AMERICAN SURETY COMPANY OF
NEW YORK,

By CHAS. HOFFMAN,

Resident Vice-President.

Attest:

(Signed) C. MURPHY,
Resident Assistant Secretary.

Approved this 7th day of June, 1921.

(Signed)

R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 71 to 80 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3546, wherein Dillard P. Eubank and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 70, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Dillard P. Eubank, John B. Files, Eugene Hansen, T. D. Starnes, J. L. Urquhart, and Gulf Refining Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3546 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Dillard P. Eubank and others as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

[Endorsed:] No. 3546. United States Circuit Court of Appeals, Fifth Circuit. Dillard P. Eubank et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellants. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,352. U. S. Circuit Court Appeals, 5th Circuit. Term No. 397. Dillard P. Eubank, John B. Files, Eugene Hanszen, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,352.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1922

No. 116

LYDIA HANSZEN MacMULLEN, J. A. MacMULLEN,
H. EARL BARNES, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JULY 2, 1921.

(28,353)

(28,353)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 398.

LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN,
H. EARL BARNES, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges.

LYDIA HANSZEN McMULLEN, J. A. McMULLEN, H. EARL BARNES, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3547, as follows:

acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Mrs. Lydia Hanszen McMullen, a citizen of the State of Nevada, and a resident of the town of Carson City, said State;

J. A. McMullen, husband of the said Mrs. Lydia Hanszen McMullen, a non-resident of the state, whose residence is unknown to plaintiff;

Sam W. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

H. Earl Barnes, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

The Pure Oil Operating Company, a corporation organized under the laws of the State of West Virginia and domiciled in the City of Pittsburgh, Pennsylvania, and doing business in the Western District of Louisiana with L. C. Blanchard of Shreveport, Louisiana, as its duly authorized agent for the service of process.

Robert L. Stringfellow, a citizen of Louisiana and a resident of the City of Shreveport in the Western District of said State, Shreveport Division.

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

2 Natalie Oil Company, a corporation organized under the laws of Louisiana and domiciled and doing business in the City of Shreveport, in the Western District of said State, Shreveport Division;

 Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State; and the

 Standard Oil Company of Louisiana, a corporation organized under the laws of Louisiana, and domiciled in the City of Baton Rouge, Eastern District of said State; and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the direction and with the approval of the Secretary of the Interior, and is now known and described as Lot Number Three (3) of Section Three (3) and Lots Numbers Three, Four and Five (3, 4 and 5) of Section Four (4), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing thirty-seven and seventy-nine hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum gas and other minerals therein contained.

were extracted therefrom under the color of an illegal mineral location made by defendants Lydia Hanszen (now Mrs. Lydia Hanszen McMullen), H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow and Dillard P. Eubank, pretending to act under the placer mining laws of the United States, which pretended location was recorded April 2, 1910, in Book 59, page 267, of the Conveyance records of Caddo Parish, Louisiana. That said pretended mineral location embraced eighty-seven and nine hundredths acres, including the land herein involved, and is in words and figures as follows:

That said pretended mineral location embraced thirty-seven and fifty-eight (37.58) hundredths acres, including the land herein involved, and which location is in words and figures as follows, to-wit:

Notice of Mining Location.

Miss L. Hanszen, et als.
to
The Public.

To all whom it may concern:

Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, having complied with the requirements of Chapter VI, title 32 of the Revised Statutes of the United States, and the local laws, rules and regulations and under authority of the Act of Congress of February 11, 1897, relating to the location of land containing petroleum, oil or other mineral oils under placer mining laws, the undersigned have located and caused a survey to be made, and have taken possession of 87.09 acres of land, described as follows, lying in Caddo Parish, Louisiana, to-wit:

Beginning 56 chains West of the SE corner Sec. 3, T. 20 N. R. 16 W. at a stake, run thence west $48\frac{1}{2}$ chains; thence N. 2° E. 6 chains; thence N. 15° W. 3 chains; thence N. $47\frac{1}{2}^{\circ}$ E. 2.5 chs.; thence N. 16° W. 2.5 chs; thence S. $86^{\circ} 30'$ W. 2.5 chs.; thence N. $17^{\circ} 18'$ W. 2.05 chs.; thence N. 10° E. 2.5 chs.; thence N. $84^{\circ} 30'$ W. 3.75 chs.; thence N. $2^{\circ} 54'$ E. 2.2 chs.; thence N. $51^{\circ} 20'$ E. 3 chs.; thence N. $52^{\circ} 27'$ E. 7.61 chs.; thence N. $1^{\circ} 23'$ W. 5.33 chs.; thence N. $74^{\circ} 36'$ E. 10 chs.; thence S $25^{\circ} 6'$ E. 6 chs.; thence S. $9^{\circ} 55'$ E. 3.5 chs.; thence S. $40^{\circ} 50'$ E. 21 chs.; thence S. $66^{\circ} 40'$ E. 6.5 chs.; thence N. $81^{\circ} 30'$ E. 3.5 chs.; thence S. $83^{\circ} 40'$ E. 8 chs.; thence S. $18^{\circ} 40'$ E. 6.25 chs.; to place of beginning and have set stakes at each corner thereof, containing 87.09 acres.

Witness our hands this 2nd day of April, 1910.

Signed: L. HANSZEN,
By R. L. STRINGFELLOW.
S. W. MASON,
By R. L. STRINGFELLOW.
D. P. EUBANK,
By R. L. STRINGFELLOW.
H. E. BARNES,
By R. L. STRINGFELLOW.
Locators.

Attest:

B. F. ALLEN,
J. T. SPEARMAN.

The said above pretended locators themselves made no effort to explore said land, or drill for oil or gas thereon, but on April 21, 1910, by act recorded in Book 59, page 355, executed a mineral lease thereof to E. H. Jennings, who on January 6, 1911, by act of record in Conveyance Book 66, page 665, transferred said lease to the Pure Oil Operating Company, defendant herein, which acts aforesaid are of record in the Office of the Clerk and Recorder of Caddo Parish, Louisiana.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended mineral location and leases, and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the defendant, the Pure Oil Operating Company, marketed and sold to the said Gulf Refining Company of Louisiana, and to the said Standard Oil Company of Louisiana, defendants herein. That the said Pure Oil Operating Company received the price of the oil and gas so produced, marketed and sold by it, and paid a royalty out of the same to the above named locators, and to defendant Natalie Oil Company, which acquired an interest in such royalty, the amount of which price so received, and of which royalty so paid, being to plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the defendants is sought.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of One Hundred
Thousand (\$100,000.00) Dollars, and that all of
6 the defendants herein acted in bad faith in the premises.

VIII.

In consideration whereof and forasmuch as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location and lease, and transfers thereof, as set forth in paragraph V of this bill, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiffs title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, (used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production
7 and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of

oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to the Pure Oil Operating Company, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank and the Natalie Oil Company, defendants herein, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such orders, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court, that an order be granted and entered, directed to the following
 8 defendants, not inhabitants of or now within this district, to-wit: Mrs. Lydia Hanszen McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and served as provided by law, directing said defendants to appear and answer in this cause on a day certain to be designated by this Court.

And may it further please the Court, that an order be granted and entered directed to J. A. McMullen, defendant herein, directing said defendant to appear and an-

swer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

ROBERT A. HUNTER,
Special Assistant to the At-
torney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 28th day of July, 1917.

(Seal) C. W. CALHEATT,
Deputy Clerk U. S. District Court
Northern District of California.

9

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana are not inhabitants of the Western District of Louisiana and are domiciled outside of said district.

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 1st day of Oct., 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for the period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that copies of this order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 8th day of Aug., 1917.

GEO. WHITFIELD JACK,

United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.

B.

10 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

Now comes the Gulf Refining Company of Louisiana,
one of the defendants in the above cause, and moves the
Court to dismiss the bill filed in this case because said
bill does not state any matter of equity entitling plaintiff
to the relief prayed for, nor are the facts as stated suffi-
cient to entitle plaintiff to any relief against this de-
fendant.

Wherefore, defendant prays that this motion be sus-
tained, the bill be dismissed as against this defendant,
and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,

Solicitor for Defendant, Gulf Re-
fining Company of Louisiana.

Indorsed:—Motion to Dismiss on Part of Gulf Refin-
ing Company of Louisiana. Filed Aug. 18, 1917.

B.

11 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America,

Plaintiff,

vs.

No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Nata-
lie Oil Company, Gulf Refining Company of Louisi-
ana, Standard Oil Company of Louisiana,

Defendants.

The defendants, Mrs. Lydia Hanszen McMullen, divorced
wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason,
Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Oper-
ating Company, and J. A. Thigpen and S. L. Herold as
liquidators of the Natalie Oil Company, said corporation
having been heretofore dissolved, answer the bill of com-
plaint herein brought against them as follows:

I.

The ownership by the United States, on and before
December 15th, 1908, of all the tract of land described
in Article I of the bill of complaint except Lot Three (3)
of Section Four (4) is admitted; but it is denied that the
plaintiff is now the owner of any part thereof or entitled
to the possession of said land or of the minerals therein
contained.

As to said Lot Three of Section Four, defendants say
that they were advised that same was the property of the
United States prior to their taking possession of same
as hereinafter set out; but from facts ascertained long

subsequent thereto, they cannot now categorically affirm or deny such ownership of said lot by the United States on said date, but they say that they took possession of all said property believing it to be public land of the United States.

12

II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of the United States or that such order pretended to operate to withdraw said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said tract under the mining laws, and defendants show that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Your defendants admit that they entered upon and took possession of said property for the purpose of drilling for

oil and gas and did drill the wells referred to in the bill of complaint, from which wells oil has been produced and sold, as will hereafter be specifically set out. But defendants show that said wells were drilled in good faith under a valid and legal mineral location, and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority, or in bad faith, or to the injury of plaintiff.

13

IV.

The averments of Article Four of the bill of complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants except the Natalie Oil Company (which acquired later by purchase from H. Earl Barnes) were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article One of the bill, and that under said location your defendants were in possession of said land, as bona fide occupants thereof, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order.

V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Miss Lydia Hanszen (now Mrs. Lydia Hanszen McMullen), H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow and Dillard P. Eubank; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws

of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Your defendants admit the execution of lease by said locators to E. H. Jennings, and the assignment thereof to the Pure Oil Operating Company (as recorded in Conveyance Book 66, page 665, of the records of Caddo Parish, Louisiana); and show that under said lease, lawfully made and entered into, said E. H. Jennings proceeded in good faith and according to the terms of said lease to drill upon said location, commencing such effort on April 30th, 1910, and completing same with the discovery of oil in paying quantities by the bringing in on the tenth day of September, 1910, of an oil well, thereby fully completing said location.

And defendants admit that there has been withdrawn from said land through said wells, drilled as
 14 aforesaid under said mineral location, a large quantity of oil, which, after delivery to the mineral locators of their proportion as royalty, as provided in said lease, the Pure Oil Operating Company has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location, in diligent prosecution of work thereon leading to a discovery of oil, at the date of and prior to said withdrawal order, and followed by the assesment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, at which said date and prior thereto, said mineral locators were in the actual possession of said land as bona fide occupants thereof in diligent prosecution of work thereon leading to a discovery of oil (which said discovery was in fact made through such work on the tenth day of September, 1910) and that as such, all the rights of said locators were specially saved and excepted from the scope, force and effect of said withdrawal, by its own terms and by the effect of the act of Congress approved June 25th, 1910; all of which defendants allege to be true and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

IX.

In event they be required to answer further, then your defendants would show that in its operation on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom a quantity of oil, the amount and value of which will be shown later by an amendment to be filed to this answer.

X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant Pure Oil Operating Company, likewise, before acquiring said contract of lease consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location aforesaid was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given acquired said lease and drilled the wells above referred to.

And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

XI.

And defendants show in the alternative, that is in the event the Court holds said location invalid, that Lot

Three of Section Four is not the property of the United States and was not the property of the United States at the date of said location, or on December 15th, 1908, but was on such dates and long prior thereto, the property of the Board of Commissioners of the Caddo Levee District of Louisiana.

Defendants show in such event that said property is and was on March 2nd, 1849, swamp and overflowed land, and that by act of Congress approved on said date, there was granted to the State of Louisiana all the swamp and overflowed lands within said state; and that such act of Congress was a present grant thereof, operating such effect from its date. That said lands were left out of all surveys by the United States until the survey approved March 28th, 1917, wherein each lot either consists entirely of such swamp and overflowed land or consists for the greater portion thereof of such swamp lands.

And defendants show that said lands were granted by the State of Louisiana by Act 160 of the General Assembly of the year 1900 to said Board of Commissioners of the Caddo Levee District of Louisiana, as more fully appears from certificate of approval thereof by the Register of the State Land Office and the State Auditor of date July 6th, 1901, as recorded in Conveyance Book 28, pages 329, to 332 of the records of Caddo Parish.

And defendants, hence, still in the alternative, show that the United States having disposed by said act of Congress of said lands, has no further interest therein and can take nothing by this suit in regard thereto.

XII.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under

a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that

17 said wells were drilled in good faith and under such belief. And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for any oil extracted therefrom; the cost of drilling, equipping and operating said wells will be set out later by an amendment to be filed to this answer.

Wherefore, having made full and complete answer to all the allegations of the aforesaid bill of complaint, defendants pray that said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that the said Pure Oil Operating Company may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said wells and of the operation thereof up to date of final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Pure Oil Operating Company and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Solicitors for Defendants.

Indorsed:—Answer. Thigpen & Herold. Barnette & Blanchard. Filed Sept. 29, 1917.

18 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisi-
ana, Sitting within and for the Shreveport Division:
The answer of the Standard Oil Company of Louisiana,
one of the defendants, to the bill of complaint of the United
States of America, complainant.

This defendant saving and reserving unto itself all and
all manner of benefits and advantages of exception, which
can or may be had or taken to the many errors, uncer-
tainties and other imperfections in said Bill of Complaint

contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says as follows:

First. This defendant is not sufficiently informed as to the matters and things alleged and set out in paragraphs one and two of said Bill of Complaint to admit the same as therein stated; and, therefore, formally denies the same and leaves the complainant to make such proofs thereof as it may be advised.

19 Second. This defendant denies that it took possession of any part of the property described in paragraph three of plaintiff's Bill of Complaint, or that it drilled any wells thereon, but admits that it bought oil from said property, or a part thereof, under the terms and conditions hereinafter stated.

Third. In answer to the fourth paragraph of plaintiff's Bill of Complaint, this defendant says that it is not sufficiently informed as to whether any of its co-defendants were in possession of the property on the day and dates therein alleged, and for that reason it is unable to admit the matters and facts therein stated; but it denies that it was in possession of said property, or any part thereof, or, at the time, claiming rights of any nature or character whatever in connection therewith.

Fourth. In answer to the fifth paragraph of plaintiff's Bill of Complaint this defendant admits that L. Hanszen (now Mrs. McMullen), R. L. Stringfellow, S. W. Mason, D. P. Eubanks, and E. H. Barnes made a mineral location on said property, but it is not sufficiently advised in the premises to say whether the location was

legal or illegal, and, therefore, formally denies that said mineral location was illegal, and leaves the complainant to make such proof thereof as it may be advised; that it is not advised as to whether the locators made an effort to explore said land, but admits that they made and executed a mineral lease thereon to E. H. Jennings, and that the said E. H. Jennings made a transfer thereof to the Pure Oil Operating Company, one of its co-defendants, as therein alleged.

Further answering, this defendant admits that it has no title or interest in said property, and being without information as to the other matters of fact alleged in this paragraph of the Bill of Complaint is not in a situation to admit the same as therein stated, and it, therefore, formally denies the same and leaves the complainant to make such proof thereof as it may be advised; but this defendant avers, however, that it is unable to state
 20 what quantity of oil was taken from said property, and from what wells said oil was taken, and the number of wells drilled on said property; that it took a part of the oil produced from said property which was run into its pipe lines as hereinafter stated.

Fifth. This defendant avers that on the 26th day of February, 1912, the said Pure Oil Operating Company, R. L. Stringfellow, Sam W. Mason, H. E. Barnes, D. P. Eubanks and L. Hanszen (now Mrs. McMullen) executed a division order, or agreement, with this defendant, wherein and whereunder they declared, certified and guaranteed to it that they were the legal owners of wells Nos. 1 and up on the property covered by said mineral location, which, as your defendant is advised, embraces a part of the property described in the Bill of Complaint, and, that this defendant acquired oil from said parties,

in good faith, and for valuable consideration, taken from said property, but this defendant is without information as to the number of wells drilled on said property, or the amount of oil taken therefrom, and whether the same was located on the particular property, the ownership of which is now claimed by the complainant, and this defendant annexes hereto a copy of the contract under which said oil was taken and the various assignments, and makes the same a part hereof, and marked "Defendant—Exhibit A."

Sixth. This defendant further answers that the oil so taken was acquired from said parties at the market price thereof on the respective dates on which the same was run into its pipe lines; that the total number of barrels of oil taken by this defendant from said parties, from said lease, amounts to 168,066.94 barrels, of the value of \$156,251.33; that of the amount due for said oil the sum of \$105,021.49 has been paid to the respective claimants, as hereinafter set out, and that this defendant has
 21 now in its hands \$51,229.84 to be paid to the rightful owner, or owners, when the question of title to said property from which said oil was taken is finally determined. All of the oil taken, as aforesaid, and the amounts paid and retained will be shown by itemized statement which will be produced on the hearing hereof.

Seventh. This defendant denies that it bought said oil in bad faith. On the contrary, it avers that it acquired same in good faith, and run the same into its pipe lines from wells claimed to be owned by its co-defendants.

Eighth. Defendant further avers that it does not know and is not informed which one of the well or wells drilled

on said property is or are on the land in controversy, but that said oil was bought by it from the supposed owners, as alleged in paragraph five of this answer, and that the same was received and taken by it into its pipe lines, but not from any particular, separate, distinct, or designated well or wells, but that all of said oil was run and taken from wells drilled on said premises without reference to any particular or designated well or wells, and that it is unable to state with any degree of certainty the amount of oil taken from any or from each of the wells drilled on said property, and that prior to the taking of any of said oil it was advised by the alleged owners that the title thereto was vested in them, and that the oil so bought was acquired in good faith.

Ninth. Further answering, this defendant avers, in the alternative, that it acquired said oil from its co-defendants, who warranted the title to the property from which the same was taken, and that in the event their title to said property should be declared void, and this defendant held for the purchase price thereof, its co-defendants would constitute warrantors of the title thereto; and they being parties to said suit, should this defendant be
 22 declared liable to the said complainant, for the value thereof, then, and in that event, it should have a like judgment against its co-defendants for such judgment as may be rendered against it in the premises; that such relief, in behalf of this defendant, would avoid a multiplicity of suits, and that in law and equity, should it be cast, it is entitled to a like judgment against each of them for such amounts as might be shown to have been paid to them.

Tenth. Further answering this defendant avers that when some question was raised as to the ownership of said

property it required of said defendants bonds of indemnity to secure it against any loss which might be occasioned by any successful claim urged against their said title, and to that end some of said parties executed bonds to indemnify it against loss of any nature or character whatever occasioned by adverse claims of ownership to said property, or the oil taken therefrom; that in conformity with said requirement, the said Pure Oil Operating Company executed a bond, of date December 18, 1913, for \$125,000.00, with the American Surety Company of New York, as surety, to cover this and oil taken from other properties, as shown by copy attached hereto and marked "Defendant—Exhibit B"; that on the 15th day of June, 1914, the said Pure Oil Operating Company executed another bond for \$50,000.00, with the American Surety Company of New York, as surety, which is also annexed hereto and marked "Defendant—Exhibit C"; that on January 6th, 1913, R. L. Stringfellow executed a bond for \$1,500.00, with the Southwestern Surety Company of Oklahoma as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit D" that on the 27th day of August, 1912, H. E. Barnes and H. L. Heilperin executed a bond for \$2,000.00, with the Fidelity & Deposit Company of Maryland as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit E"; that

23 on the 16th day of May, 1912, the said H. E. Barnes and H. L. Heilperin executed another bond for \$1,000.00, with the Fidelity & Deposit Company of Maryland as surety, a copy of which is attached hereto and marked "Defendant—Exhibit F"; that on the 5th day of June, 1914, the said Sam W. Mason executed a bond for \$2,500.00, with H. L. Heilperin as surety, a copy of which is also annexed hereto and marked "Defendant—Exhibit G"; that on the 9th day of February, 1914, the said Sam W. Mason executed a bond for \$2,500.00,

with H. L. Heilperin as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit H"; that on the 14th day of June, 1913, the said D. P. Eubanks executed a bond for \$2,500.00, with the United States Fidelity & Guaranty Company, as surety, a copy of which is annexed hereto and marked "Defendant—Exhibit I"; that on the 25th day of January, 1914, the said H. L. Heilperin and H. E. Barnes executed a bond for \$5,000.00, with J. A. Thigpen and S. L. Herold as surety, a copy of which bond is also annexed hereto and marked "Defendant—Exhibit J", that upon the execution of said bonds, and on the faith thereof, the said sum of \$105,021.49 was paid to the said Pure Oil Operating Company, H. L. Heilperin, H. E. Barnes, Sam W. Mason, D. P. Eubanks and R. L. Stringfellow, some of its co-defendants, and said amounts, so paid being shown by itemized statement to be produced on the trial hereof; and that defendant reserves the right, in the event it should be cast in this proceeding, to proceed against said sureties and principals to recover any loss it may sustain by reason of any judgment which may be obtained by the complaint against it.

Wherefore, this defendant having made full and complete answer to all the matters and things required of it in plaintiff's Bill of Complaint, prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained; and on final hearing should this defendant be cast, that a decree be entered in its favor against its co-defendants, the Pure Oil Operating Company, H. L. Heilperin, H. E. Barnes, Sam W. Mason, D. F. Eubanks and R. L. Stringfellow for such judgment as may be rendered against it on the demands of the complainant; and finally, this defendant prays for all general and equitable relief in

the premises, and for all such as it may be entitled to from the evidence and facts adduced on the trial hereof, and for all other necessary orders and decrees as it may be entitled to in equity and good conscience, and from the nature and character of this case.

J. C. PUGH & SON,
Solicitors for Standard Oil
Co. of La.

25 "DEFENDANT—EXHIBIT A."

Shreveport, La., Feb'y. 26, 1912.

To the Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of Wells No. 1 and up on the Hanszen Farm, Sec. 4, Township 20, R. 16, Caddo Parish, State of Louisiana, including the royalty and interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Credit	Division of Interest	Postoffice Address.
The Pure Oil Operating Co., 7/8,		Pittsburg, Pa.
L. Hanszen, Trustee for S.		
W. Mason, D. P. Eubank and		
Herself	1/16	Shreveport, La.
H. E. Barnes	1/32	Shreveport, La.
R. L. Stringfellow	1/32	Shreveport, La.

Tank Nos.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this division order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received in its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dust and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

By E. H. JENNINGS, Treasurer.

R. L. STRINGFELLOW,

SAM W. MASON,

H. E. BARNES,

D. P. EUBANK,

L. HANSZEN,

L. HANSZEN, TRUSTEE.

Witness:

W. J. HIGGINS,
S. L. CRONIN (23, 4 & 5)

Approved:

J. C. PUGH.

26

March 1st, 1916.

To the Standard Oil Co. of La.:

The undersigned have this day sold 1/32nd interest in Wells Nos. 1 and up, on Hanszen Mineral Claim Farm, Secs. 3 and 4, Tp. 20 R. 16, Caddo Parish, State of Louisiana, as below.

Interest	Name	Postoffice Address.
1/32nd	Natalie Oil Company	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tanks Nos.

H. E. BARNES,
ESTATE OF H. L. HEILPERIN,
By MARX BLUESTEIN,
J. A. THIGPEN, Executors.

The undersigned hereby certify and agree that, the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Company of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Co. of La. is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First. The oil run in pursuance of this order shall become the property of the Standard Oil Co. of La. as soon as the same is received into its custody.

Second. The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Co. of La. for the same kind and quality of oil, on the day of the receipt thereof.

Third. The Standard Oil Co. of La. shall deduct three per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Co. of La. satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Co. of La. may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,
By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.
Copy.

(Copy).

State of Louisiana,
Parish of Caddo, ss:

Know all men by these presents, that we, The Pure Oil Operating Company, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana in the full sum of One Hundred Twenty-five Thousand Dollars, for the payment of which we bind ourselves, our successors and legal representatives, firmly and in solido by these presents.

Dated at Shreveport, Louisiana, this 18th day of December, in the year of our Lord one thousand nine hundred and thirteen.

The condition of the above obligation is such that:

Whereas, the said The Pure Oil Operating Company as the lessee of L. Hanszen, et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, North, Range Sixteen West, being the same tract of land located under Placer Mining Laws by the lessors on April 2, 1910, as appears from the said location recorded in the Conveyance Records of Caddo Parish, Louisiana; and

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ

of error sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said The Pure Oil Operating Company; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hanszen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Ten, Township Twenty, North, Range Sixteen West, and being more particularly described as follows:—Beginning at a

28 point twenty-four chains east of the northwest corner of said section Ten; thence south twenty degrees west ten chains; thence south forty-three degrees east twenty chains to a stake at traverse corner, which is the beginning of the tract so leased and herein located; thence south sixty degrees west eight and five-tenths chains; thence south five chains; thence south forty-five degrees east ten chains; thence south forty degrees west one and sixty-two one-hundredths chains; thence west thirty-four and fixty-six one-hundredths chains to stake on traverse line; thence north thirty degrees east thirteen and eight one-hundredths chains along traverse line; thence north seventy-eight degrees east along traverse line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres, more or less, a stake being set at each corner of said tract, and being the same land surveyed out and the lines and corners marked by the Lessors on April 24, 1910, under their file and claim under the Placer Mining Laws of the United States as appears from the said

location recorded in the Conveyance Records of Caddo Parish, Louisiana; and,

Whereas, patent has not yet been obtained under the said mining location; and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three and Four, Township Twenty, Range Sixteen, being a long narrow strip of land running along the south line of said sections and known as the "Green Mineral File"; and,

Whereas, the said Standard Oil Company of Louisiana, the obligee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said three pieces of land above described, and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company:

Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United
 29 States of America, and to all the entry other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the credit of and purchased from other and third persons claiming to be interested therein, but

only to cover and embrace the oil run therefrom to the credit of and purchased from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING
COMPANY,

(Signed) By T. W. PHILLIPYS,
(Seal) Its President.

Attest:

(Signed) W. J. HIGGINS, Its Secretary.
AMERICAN SURETY COMPANY
OF NEW YORK,

(Signed) By LEON R. SMITH,
(Seal) Resident Vice-President.

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

(Signed) W. B. CARLON,
(Signed) C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

(Signed) J. E. JOHNSTON, JR.,
(Signed) GEO. G. DIMICK.

Approved:

J. C. PUGH.

(Copy).

State of Louisiana,
Parish of Caddo.

Know all men by these presents, that we, The Pure Oil Operating Company, as principal and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in the full sum of Fifty Thousand (\$50,000.00) Dollars, for the payment of which we bind ourselves, our successors and legal representatives, firmly and in solido by these presents.

Dated at Shreveport, Louisiana, this 15th day of June, in the year of our Lord, One Thousand Nine Hundred and Fourteen.

The conditions of the above obligation is such that:

Whereas, the said Pure Oil Operating Company as the lessees of L. Hanszen, et al., has drilled a number of wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections Three (3) and Four (4), Township 20, North, Range 16 West, being the same tract of land located under the placer mining laws by the lessors on April 2nd, 1910, as appears from the said location recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, the said property is claimed by the Producers Oil Company, which Company has instituted suit to recover the said property, and which said suit is now pending in the Supreme Court of the United States on a writ

of error sued out by the Producers Oil Company to the Supreme Court of Louisiana, which latter Court has sustained the right of the lessors of the said Pure Oil Operating Company; and,

Whereas, the said The Pure Oil Operating Company as lessee of L. Hanszen and W. H. Matthews has drilled a number of oil wells upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Section Two, Township Twenty, North, Range Sixteen West, and being more particularly described as follows:

31 Beginning at a point twenty-four chains East of the Northwest corner of said Section Ten; thence South twenty degrees west ten chains; thence south forty-three degrees East twenty chains to a stake at traverse corner, which is the beginning of the tract so leased and herein located; thence south sixty degrees west eight and five-tenths chains; thence south five chains; thence south forty-five degrees East ten chains; thence South forty degrees West one and sixty-one one-hundredths chains; then West thirty-four and fifty-six one-hundredths chains to stake on traverse line; thence North thirty degrees East thirteen and eight one-hundredths chains along traverse line; thence north seventy-eight degrees East along traverse line thirty chains, more or less, to the place of beginning, containing thirty-seven and fifty-eight one-hundredths acres more or less, a stake being set at each corner of said tract, and being the same land surveyed out and the lines and corners marked by the lessors on April 24th, 1910, under their file and claim under the Placer Mining Laws of the United States, as appears from said location, recorded in the Conveyance Records of Caddo Parish, La., and,

Whereas, patent has not yet been obtained under the said mining locations; and,

Whereas, the said The Pure Oil Operating Company is operating a well upon a certain tract of land in the Parish of Caddo, State of Louisiana, in Sections three and four, Township twenty, Range Sixteen, being a long narrow strip of land running along the South Line of said sections and known as the "Green Mineral File"; and,

Whereas, the said Standard Oil Company of Louisiana, the obligee herein, has purchased a large part of the oil produced by the said The Pure Oil Operating Company from the said three pieces of land above described, and is now running further and additional oil from the said three pieces of land under purchase from the said The Pure Oil Operating Company.

Now, therefore, if the said The Pure Oil Operating Company shall fully indemnify and hold harmless the said Standard Oil Company of Louisiana from any liability to the Producers Oil Company, and to the United
32 States of America, and to all and every other person, firm, association or corporation whatsoever by reason of or on account of its purchasing and handling said oil, then this obligation to be void, otherwise to be and remain in full force and virtue.

It is understood and agreed, however, that this bond is not intended to cover any oil run from the said Green Mineral File to the credit of and purchased from other and third persons claiming to be interested therein, but only to cover and embrace the oil run therefrom to the

credit of and purchase from the said The Pure Oil Operating Company.

THE PURE OIL OPERATING
COMPANY,

By E. H. JENNINGS,

(Seal)

Its President.

AMERICAN SURETY COMPANY
OF NEW YORK,

By LEON R. SMITH,

(Seal)

Resident V-Pres.

Attest:

W. J. HIGGINS,

Its Secretary.

Signed, sealed and delivered by the Pure Oil Operating Company in our presence:

W. B. CARLON,

C. C. HERZOG.

Signed, sealed and delivered by the American Surety Company of New York in our presence:

N. C. BLANCHARD,

GEO. G. DIMICK.

Approved:

J. C. PUGH.

(Copy).

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, R. L. Stringfellow, as principal, and Southwestern Surety Ins. Co., of Okla., as surety, are held and firmly and in solido bound unto the Standard Oil Company of Louisiana, in the sum of Fifteen Hundred (\$1,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 6th day of January, 1913.

Now the condition of the above obligation is such that:

Whereas, the above bounden R. L. Stringfellow claims to be the owner of an undivided one-fourth of one-eighth ($1/4$ of $1/8$) of all oil that has been saved from that produced on that certain tract of land known as the Hanszen 87 acre Mineral Claim, located partly in Section Three (3) and partly in Section Four (4), Township Twenty (20), Range Sixteen (16), which said land is being developed for oil and gas, under an oil and gas lease by the Pure Oil Operating Company; and

Whereas a portion of the oil produced from said land has been run by the Standard Oil Company of Louisiana, and the said above bounden R. L. Stringfellow claims to be entitled to one-fourth of one-eighth ($1/4$ of $1/8$) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and

Whereas the said R. L. Stringfellow and his co-locators have not secured a patent to said lands; and

Whereas, the ownership of the said land is claimed by the Producers Oil Company;

Now, therefore, if the said above bounden R. L. Stringfellow shall hold the Standard Oil Co. of Louisiana harmless against all claims which may be asserted by the United States Government, or by the Producers Oil Company, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Stringfellow, under his said claim as owner of an undivided interest in said oil, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

34 This bond being given by the said R. L. Stringfellow for the lease and payment to him of an undivided interest in the proceeds of, oil run from said above described lands, in addition to bonds heretofore furnished and securities heretofore given for the payment to him of money under his aforesaid claim.

(Signed)

R. L. STRINGFELLOW, (Seal)
SOUTHWESTERN SURETY INS.
CO. OF OKLA.,

A. C. BODENHEIMER,

Agent and attorney in fact.

Approved:

PUGH & FILLILOVE.

"DEFENDANT EX. E."

Fidelity & Deposit Company of Maryland,
Home Office, Baltimore, Md.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, H. E. Barnes and H. L. Heilperin, as principals, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto and in favor of the Standard Oil Co. of Louisiana, in the full sum of Two Thousand and No/100 Dollars (\$2,000.00), for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, legal representatives, successors and assigns firmly and in solido by these presents.

Dated at Shreveport, La., this 27th day of August, 1912.

The condition of the above obligation is such that, whereas, the said H. E. Barnes, together with R. L. Stringfellow, Sam W. Mason, D. P. Eubank and L. Hanszen, did on the 2nd day of April, 1910, take possession and locate under the place mining laws of the United States, a tract of land containing 87.9 acres of land situated in Sections 3 and 4, Township 20, North, Range 16 West, which said tract was subsequently leased under an oil and gas lease to E. H. Jennings, who subsequently assigned the said lease to the Pure Oil Operating Company; and

Whereas, the said H. E. Barnes, as the owner of an undivided one-fourth interest in said property, subsequently sold to H. L. Heilperin an undivided one-half interest in the said undivided one-fourth interest; and

Whereas, the Standard Oil Company of Louisiana has been purchasing from the Pure Oil Operating Company, its lessor, the oil produced from the said land and is still running the said oil as purchaser;

Now, therefore, this bond is given as surety and indemnity to protect the said Standard Oil Company of Louisiana from any liability, loss or damage, whatsoever, to the United States or to any person or corporation by reason of its purchase or handling of said oil; and

Therefore, if the said Barnes and the said Heilperin shall well and trully indemnify and make good to the said Standard Oil Co. of Louisiana, any liability, loss or damage by reason of the purchase of the oil from the said mineral location, then this obligation to be null and void; otherwise to remain in full force and effect.

(Signed)

(Signed)

(Seal)

H. E. BARNES,

H. L. HEILPERIN,

FIDELITY & DEPOSIT CO. OF
MARYLAND,

D. T. LAND,

PHILIP LIEBER,

Agents and Attorneys in Fact.

Approved:

J. C. PUGH.

(Copy).

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That, we, H. E. Barnes and H. L. Heilperin, as principals, and the Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto and in favor of the Standard Oil Company of Louisiana, in the full sum of One Thousand (\$1,000.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, legal representatives, successors and assigns, firmly and in solido by these presents.

Dated at Shreveport, La., this 16th day of May, 1912.

The condition of the above obligation is such that:

Whereas, the said H. E. Barnes, together with R. L. Stringfellow, Sam W. Mason, D. P. Eubank, and L. Hansen, did on the second day of April, 1910, take possession and locate under the placer mining laws of the United States a tract of land containing 87.9 acres of land situated in Section 3 and 4, Township 20 North, Range 16 West, which said tract was subsequently leased under an oil and gas lease to E. H. Jennings, who subsequently assigned the lease to the Pure Oil Operating Company and

Whereas, the said H. E. Barnes, as the owner of an undivided one-fourth interest in said property, subsequently sold to H. L. Heilperin an undivided one-half interest in the said undivided one-fourth interest; and

Whereas, the Standard Oil Company of Louisiana has been purchasing from the Pure Oil Operating Company, lessee and its lessors, the oil produced from the said land and is still running the said oil as purchaser;

Now, therefore, this bond is given as surety and indemnity to protect the said Standard Oil Company of Louisiana from any liability, loss or damage, whatsoever to the United States or to any person or corporation
 37 by reason of its purchase or handling of said oil; and

Therefore, if the said Barnes and the said Heilperin shall well and truly indemnify and make good to the said Standard Oil Company of Louisiana any liability, loss or damage, by reason of the purchase of the oil from the said mineral location, then this obligation is to be null and void; otherwise to remain in full force and effect.

(Signed) H. L. HEILPERIN,

(Signed) H. E. BARNES,

(Seal)

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

By D. T. LAND,

PHILIP LIEBER,

Agents and Attys. in fact.

Approved:

J. C. PUGH.

"DEFENDANT EX. G."

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents, that we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, which sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents, to pay,

Dated at Shreveport, Louisiana, this 5th day of June,
A. D. 1914.

Now, the condition of the above obligation is such that:

Whereas, the above bounden, Sam W. Mason, claims to be the owner of an undivided one-sixty-fourth ($1/64$) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in sections 3, 4 and 10, Township 20, North, Range 16, West; said properties fully described in Book 59 of Conveyances of Caddo Parish, Louisiana, page 355 and 387, and to which reference is hereby had, and which properties are being operated for the production of oil by the Pure Oil Operating Company; and,

Whereas, the oil from said wells on said properties is being run by the Standard Oil Company of Louisiana, and the above bounded, Sam W. Mason, claims to be entitled to $1/64$ interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company of Louisiana is taking said oil from said wells, as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security:

Now, therefore, if the said above bounden, Sam W. Mason, shall hold the Standard Oil Company of Louisiana harmless against all claims that may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,
(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH.
R. WOLF.

Approved:

J. C. PUGH & SON.

"DEFENDANT EX. H."

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, Sam W. Mason, as principal, and H. L. Heilperin, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of two thousand five hundred (\$2,500.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, Louisiana, this 9th day of February, A. D. 1914.

Now, the condition of the above obligation is such that:

Whereas, the above bounden Sam W. Mason claims to be the owner of an undivided one-sixty-fourth (1/64) interest in and to what is known as the Hanszen-Matthews mineral lease, and what is known as the Hanszen mineral claim, situated in Sections 3, 4 and 10, Township 20 North, Range 16 West; said properties fully described in Book 59 of Conveyances, Caddo Parish, Louisiana, pages 355 and 387, and to which reference is hereby had and which said properties are being operated for the production of oil by the Pure Oil Operating Company; and

Whereas, the oil from said well on said properties is being run by the Standard Oil Company of Louisiana, and the above bounden Sam W. Mason claims to be entitled to 1/64 interest in the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana; and,

Whereas, there are adverse claims to the ownership of said property; and,

Whereas, by the contract, under which the Standard Oil Company is taking said oil from said wells as aforesaid, the said Sam W. Mason has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security:

41 Now, therefore, if the said above bounden, Sam W. Mason, shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said Sam W. Mason, under his said claim as owner of an undivided 1/64 interest in said oil, and the proceeds thereof, or damages of any nature or character whatsoever growing out of said matter, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) SAM W. MASON,
(Signed) H. L. HEILPERIN.

Attest:

J. C. PUGH,
CREA PUGH.

Approved:

J. C. PUGH.

"DEFENDANT EX. I."

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, D. P. Eubank, as principal, and the United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Standard Oil Company of Louisiana, in the sum of Twenty-five Hundred (\$2,500.00) Dollars, which said sum we bind ourselves, jointly and severally, our heirs, executors and administrators, by these presents to pay.

Dated at Shreveport, La., this 14th day of June, 1913.

Now the condition of the above obligation is such that:

Whereas, the above bounden D. P. Eubank claims to be the owner of an undivided one-sixty-fourth ($1/64$) interest in and to what is known as Lease No. 64, on the Hanszen-Matthews Farm in Section three (3) and four (4), Township 20, North Range 16 West, and also an owner of an undivided one-sixty-fourth ($1/64$) interest in and to what is known as Lease No. 65, on the Hanszen-Matthews Farm in Section 10, Township 20 North, Range 16 West, in Caddo Parish, Louisiana; and

Whereas, the oil from said well is being run by the Standard Oil Company of Louisiana, and the above bounden D. P. Eubanks claims to be entitled to the one-sixty-fourth ($1/64$) of the proceeds of such oil as has been run by and delivered to the Standard Oil Company of Louisiana, from each of the above wells; and

Whereas, by the contract under which the Standard Oil Company of Louisiana, is taking said oil from said well,

as aforesaid, the said D. P. Eubank has the right to withdraw his part of the proceeds from said oil run from said well by executing bond with approved security.

Now, therefore, if the said above bounden D. P. Eubank shall hold the Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants, or by any corporation or any person whatever, to the extent of such amount as the
 43 said Standard Oil Company of Louisiana shall pay to the said D. P. Eubank, under his said claim as owner of an undivided one-sixty-fourth (1/64) interest in said oil secured from each of the above wells, and the proceeds thereof, then and in such event this obligation shall be null and void; otherwise to remain in full force and effect.

(Signed) D. P. EUBANK. (Seal)
 UNITED STATES FIDELITY &
 GUARANTY CO.,

(Signed) By WILLIAM H. KLINE SMITH,
 Its Atty. in Fact.

Witnesses to signature of D. P. Eubank:

(Signed) J. S. PETERS,
 T. S. WHITE.

Witness:

E. P. HURMIN.

State of Louisiana,
 Parish of Caddo.

Before me, Sam W. Mason, a notary public, in and for Caddo Parish, State of Louisiana, duly commissioned and qualified, personally came and appeared D. P. Eubank who acknowledged to me that he has signed the above and foregoing bond on the day same bears date.

Given under my seal and signature of office, this, the
17th day of June, A. D. 1913.

(Signed) SAM W. MASON,

Notary Public in and for Caddo
Parish, Louisiana.

Approved:

J. C. PUGH.

Witness:

J. S. PETERS

T. S. WHITE.

44

"DEFENDANT EX. J."

Copy.

State of Louisiana,
Parish of Caddo.

Know all men by these presents: That we, H. L. Heilperin and H. E. Barnes, as principal, and J. A. Thigpen and S. L. Herold, as surety, are held and firmly bound unto the Standard Oil Company of Louisiana in the sum

of Five Thousand (\$5,000.00) Dollars, which said sum we bind ourselves jointly and severally, our heirs, executors and administrators, by these presents, to pay.

Dated at Shreveport, Louisiana, this 25th day of January, A. D. 1914.

Now the condition of the above obligation is such that:

Whereas, the Pure Oil Operating Company claims to have a lease on two tracts of land in Caddo Parish, under

assignments of lease from E. H. Jennings, the said Jennings having leased one of said tracts from L. Hanszen and others on tract of land located by said lessors under the Placer Mining Laws on April 2, 1910, and fully described in notice of location in Conveyance Book 59, Page 267, of the records of Caddo Parish; and the other lease having been executed to said Jennings by L. Hanszen and others on the tract of land containing thirty-seven acres in the Northwest $\frac{1}{4}$ of Section 10, Township 20 North, Range 16 West; the said tract having also been located by the said lessors under the Placer Mining Laws of the United States, on which said company has drilled wells producing oil.

Whereas, the oil from said wells is being run by the Standard Oil Company of Louisiana, and the above bounden H. L. Heilperin and H. E. Barnes claim a royalty jointly of one-thirty-second ($\frac{1}{32}$) of the oil produced from said wells under the terms of the lease made by E. H. Jennings, as per said contracts, and

Whereas, by the contract under which the Standard Oil Company of Louisiana is taking said oil from
 45 said wells, as aforesaid, the said H. L. Heilperin and H. E. Barnes have the right to withdraw their part of the proceeds from said oil run from said wells by executing bond with approved security:

Now, therefore, if the said bounden H. L. Heilperin and H. E. Barnes shall hold the said Standard Oil Company of Louisiana harmless against all claims which may be asserted by any adverse claimants whatever to said property, or to the oil produced therefrom, to the extent of such amount as the said Standard Oil Company of Louisiana shall pay to the said H. L. Heilperin and H. E. Barnes, together with all damages and costs, then

and in such event, this obligation to be null and void, otherwise to remain in full force and effect.

Thus done and signed in the presence of the undersigned witnesses on this the 25th day of January, A. D. 1914.

H. L. HEILPERIN,

H. E. BARNES,

J. A. THIGPEN,

S. L. HEROLD.

Witnesses:

E. G. COLLINS

WHEELER SHROPSHIRE.

Approved:

J. C. PUGH.

Filed Oct. 1, 1917.

46 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and

entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph 12, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off, or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff shows, in the alternative, that even if the said defendants are entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.

48 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,
vs. No. 1171 In Equity.
Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

And now come the defendants, Mrs. Lydia Hanszen Mc-
Mullen, divorced wife of J. A. McMullen, H. Earl Barnes,
Sam W. Mason, Robert L. Stringfellow, Dillard P. Eu-
bank, Pure Oil Operating Company, and J. A. Thigpen
and S. L. Herold, as liquidators of the Natalie Oil Com-
pany, in the above entitled and numbered cause, and move
the Court for leave to amend their answer, as will appear

in the amended answer herewith filed. That said amendments are material and necessary to a proper defense of the case; that the matter as amended and the amendments offered were not incorporated in the original answer because of the fact that counsel for defendants had not at the time within which the answer was due accurate knowledge of the facts stated in the amendments.

Wherefore, they pray that said amendments be allowed and considered a part of the answer upon the hearing of this cause.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Attorneys for Defendants.

49 In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

This cause coming on to be heard on the motion of de-
fendants to amend their answer, and both parties having
appeared, and the Court being fully advised of the amend-
ments sought to be made to the answer of the defendants
heretofore filed in this cause, it is hereby ordered, ad-

judged and decreed that the motion be granted and that the amendments as set forth in the motion be allowed; and the clerk of the Court is hereby ordered to file the same as of the date of this order, as amendments to the original answer.

Thus done and signed at Chambers, at Shreveport, Louisiana, on this the 31 day of Oct., 1917.

GEO. WHITFIELD JACK,

United States District Judge.

50 In the District Court of the United States, for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, Standard Oil Company of Louisiana, Defendants.

Amended answer of Mrs. Lydia Hanszen McMullen, divorced wife of J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, and J. A. Thigpen and S. L. Herold, as liquidators of the Natalie Oil Company, defendants in the above entitled and numbered cause.

Now come the said defendants, and, with leave of this Court first had and obtained, file this amendment to the answer heretofore filed, as follows:

Defendants amend Article IX of their original answer so as to read as follows:

IX.

Your defendants would show that in its operations on said tract as assignee of the lessee of said mineral locators, the Pure Oil Operating Company extracted therefrom, up to the 31st day of July, 1917, fifty thousand seven hundred and eight & 5/100 (50,708.05) barrels of oil, of the market value of Forty Thousand Six Hundred and Ninety-five & 80/100 (\$40,695.80) Dollars, one-eighth of which oil of the market value of Five Thousand and Eighty-six & 97/100 (\$5,086.97) Dollars was delivered to said locators under the stipulations of the lease, and the remainder retained by the said Pure Oil Operating Company for its own use as owner, all of which it had the right to do.

Defendants amend Article XII of their original answer so as to read as follows:

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XII.

And now defendants show that the Pure Oil Operating Company took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the mineral therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals, and that said wells were drilled in good faith and under such belief.

And defendant, Pure Oil Operating Company shows that in the event the Court should hold that plaintiff is

the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said wells before it can be held liable, if any such liability there be, for the the value of any oil extracted therefrom.

And defendants show that the actual cost to your defendant, Pure Oil Operating Company of the drilling and equipping of said wells was the sum of twenty-eight Thousand, Eight Hundred and Sixty-five & 49/100 (\$28,865.49) Dollars; and that the actual cost to your defendant of the operation of said wells for the production of oil up to and including July 31st, 1917, amounted to Thirty Thousand One Hundred and Sixty-two & 74/100 Dollars (\$30,162.74).

Wherefore, reaffirming the allegations and prayer of their original answer filed herein, defendants pray for judgment as originally prayed for.

THIGPEN & HEROLD,
BARNETTE & BLANCHARD,
Attorneys for Defendant.

Indorsed:—Amendment to Answer. Filed Oct. 31, 1917.

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In the District Court of the United States, for
the Western District of Louisiana, Shreve-
port, Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen, H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

I.

Now into this Honorable Court comes the United
States of America, plaintiff in the above numbered and
entitled cause, appearing herein and represented by its
Solicitor, Robert A. Hunter, Special Assistant to the
Attorney General, and for reply to set off and counter-
claim asserted by defendant the Pure Oil Operating
Company in the amended answer herein, shows:

II

That plaintiff renews and reaffirms the allegations
and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said amended
answer relating to said set off and counter claim, and
particularly paragraph 12, and the prayer of said
amended answer.

IV.

Plaintiff shows that the said defendant is not entitled to any set off or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendant entered upon the land described in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

VIII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendant be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Indorsed:—Plaintiff's Reply to Set Off and Counter Claim of Defendant (Pure Oil Operating Company) in the Amended Answer. Filed Nov. 5, 1917.

54 In the District Court of the United States for
the Western District of Louisiana, Shreve-
port Division.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia Hanszen McMullen, J. A. McMullen H. Earl
Barnes, Sam W. Mason, Robert L. Stringfellow, Dil-
lard P. Eubank, Pure Oil Operating Company, Na-
talie Oil Company, Gulf Refining Company of Lou-
isiana, Standard Oil Company of Louisiana, Defend-
ants.

And now comes the Standard Oil Company of Louisi-
ana, made one of the defendants in the above cause, and
availing itself of the reservation made in its answer, now
moves the Court to dismiss the Bill filed in this cause
as against this defendant, because said Bill does not
state any matter of equity entitling plaintiff to the re-
lief prayed for, nor are the facts as stated sufficient to
entitle plaintiff to any relief against this defendant.

Wherefore, this defendant prays the judgment of this
Court on the matter herein submitted, and that the suit
as against it be dismissed with cost.

J. C. PUGH & SON,
Solicitors for Standard Oil
Co. of La.

Indorsed:—Motion to Dismiss as to the Standard Oil
Company of Louisiana. Filed Feb. 27, 1918.

B

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27 A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1171 In Equity.

Mrs. Lydia H. McMullen, et al.

In this cause, now into Court comes the Standard Oil Company, one of the defendants herein, and files its Motion to Dismiss.

Thereupon, the said Motion to Dismiss of the Standard Oil Co. and the Motion to Strike Out Certain Interrogatories, came on to be heard—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as solicitor for the complainant, and Judge J. C. Pugh, Mr. Leon R. Smith and Wm. C. Barnette appearing for defendants. The motions were argued and submitted and thereupon the Court overruled the Motion to Dismiss, to which ruling of Court defendants excepted. The motion to strike out certain interrogatories was sustained by the Court, with leave for the complainant to renew said interrogatories at such time as it may seem proper.

Equity Journal, Vol. 1.

United States District Court, Western District of
Louisiana.

Thursday, Shreveport, La., Feb. 28, 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S.
Judge.

United States of America,

vs.

No. 1171 In Equity.

Mrs. Lydia Hanszen McMullen, et als.

This cause came on this day to be heard, according to
previous assignment, upon the Motion to Dismiss hereto-
fore filed by the Gulf Refining Company, one of the de-
fendants herein—Mr. Robert A. Hunter, Special Assist-
ant to the Attorney General, appearing as Solicitor for
Complainant, and Mr. S. L. Herold appearing as Solici-
tor for defendant. The said Motion to Dismiss was argued,
submitted and overruled by the Court.

Equity Journal, Vol. 1.

United States District Court, Western District of
Louisiana.

Friday, Shreveport, La., March 1, 1918.

Court met pursuant to adjournment and was ordered
opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1171 In Equity.
Mrs. Lydia H. McMullen, et al.

This cause came on this day to be heard upon the Pleas filed by defendants—Mr. Robert A. Hunter, appearing as solicitor for Complainant, and Mr. S. L. Herold appearing for defendants. The matter was argued, submitted and taken under advisement by the Court.

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Equity Journal, Vol. 1.

United States District Court, Western District of
Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1171 In Equity.
Mrs. Lydia Hanszen McMullen, et al.

In this cause, which cause has heretofore been argued upon the pleas filed by defendants, and submitted, counsel on either side being now present in open Court, Deci-

sion is orally rendered overruling said pleas of defendants, with the right reserved to defendants to renew said pleas upon the trial of the case on the merits.

58 (INTERROGATORIES PROPOUNDED BY PLAINTIFF TO THE PURE OIL OPERATING COMPANY, THE GULF REFINING COMPANY OF LOUISIANA AND THE STANDARD OIL COMPANY OF LOUISIANA).

(1).

In the answer of the Pure Oil Operating Company to the bill of complaint herein, it is stated that said Company drilled the wells known as Hanszen Pure Oil Operating Company's Nos. 1 and 5. State when said wells were commenced and when they were completed.

(2).

In the amended answer of the Pure Oil Operating Company, it is stated that the production of oil from the land in controversy to July 31, 1917, was 50,708.05 barrels of oil, of the value of \$40,695.80. State whether or not the production of said wells as given in said amended answer is exact or estimative.

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(3).

State the total production of oil from the said wells up to July 31, 1917, and (b) from July 31st, 1917, to January 1, 1918. Please state separately the production of each of said wells during said periods.

(4)

State whether or not the said wells were operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5)

Was a separate and complete record kept by the Pure Oil Operating Company of the oil produced by said wells? If so, state how, and in what manner said record was kept.

(6)

If the production as given by you in your answer in the bill of complaint and in your answers to the preceding interrogatories is based on an estimate of the quantity of oil produced by wells in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the wells in suit.

(7).

State the total market value of the oil produced by the Pure Oil Operating Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(8)

Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil

Operating Company to the Gulf Refining Company of Louisiana, and that after March 1, 1912, the production of said wells was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom.

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(9).

State the quantity and value of the oil extracted from the land in controversy, which was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana.

(10)

State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

(11)

What was the total price received by the Pure Oil Operating Company for all the oil produced by the wells in controversy. Please state separately the prices received by the Pure Oil Operating Company from the Gulf Refining Company of Louisiana, and the price received by the Pure Oil Operating Company from the Standard Oil Company of Louisiana, for the oil extracted from the land in suit, and sold to said Companies, respectively.

(12)

Was not the said oil sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana delivered to said Gulf Refining Company on the land

where it was produced, that is, on the property in controversy, by transfer from a tank or tanks, in which the oil was stored, to a pipe line belonging to the Gulf Refining Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Gulf Refining Company of Louisiana?

(13)

Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

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(14).

What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

(15)

What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

(16)

Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana, went

upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Gulf Refining Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(17).

Is it not a fact that an agent, representative, or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipeline run or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

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(18).

In the answer of the Standard Oil Company to the bill of complaint herein, it is stated that 168,066.94 barrels of oil of the value of \$166,251.33 was taken by it from

the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the wells in suit, and other wells not in suit, then state the names and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the wells involved in this suit.

(19)

State the quantity and value of all the oil taken and removed by the Gulf Refining Company of Louisiana from the land involved in this suit.

(20)

In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$105,021.49 has been paid to the claimants of said oil, and that \$51,229.84 is held for payment to the rightful owner. Please state the names and addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

(21).

State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged at the time said

oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(22)

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

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(23).

What are the principal products manufactured from petroleum, or crude oil?

(24)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(25)

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

(26)

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(27).

If in answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil, or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(28).

How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom

said royalties were paid, or for whose account they are now being held.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Note: All of the above interrogatories, except Nos. 18, 20, 21, 22, 23, 24, and 25, 27 to be answered by the Pure Oil Operating Company.

Interrogatories 8, 9, 12, 14, 16, 19, 22, 23, 24, 26, 27 and 28 are to be answered by the Gulf Refining Company of Louisiana, and no other interrogatories are to be answered by that Company.

Interrogatories Nos. 8, 10, 13, 15, 17, 18, 20, 21, 23, 25, 26 and 28 are to be answered by the Standard Oil Company of Louisiana, and no other interrogatories are to be answered by that Company.

Indorsed: Interrogatories to be Answered by the Pure Oil Operating Company, The Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana. Filed Feb. 2, 1918.

65 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1171 In Equity.
Mrs. Lydia Hanszen McMullen, et al., Defendant.

In the above entitled matter now comes the Standard Oil Company of Louisiana, one of the defendants here-

in, through its undersigned counsel, and suggesting to the Court that the plaintiff had propounded to it interrogatories in writing for discovery as provided by Equity Rule 58, among which are interrogatories Nos. 25 and 26, as follows:

Interrogatory No. 25: State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Standard Oil Company of Louisiana from the oil extracted from the land in controversy.

Interrogatory No. 26: State the total profits made by you (a) from the sale or any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

Now this defendant avers that it will fully appear by the petition and answer herein that the only issuable facts between the plaintiff and this defendant is the value of the oil bought by it from the property in dispute, the ownership of which is claimed by plaintiff; that from the issues so made up the answers to these two interrogatories could in no way tend to support the demands of the plaintiff against this defendant, and are, therefore, irrelevant and immaterial to any issues involved in said cause as between the plaintiff and this defendant, and an answer thereto would not illicit any fact or facts material to the support of plaintiff's action, and that said interrogatories should be stricken out.

66 Wherefore, this defendant prays that after due consideration said two interrogatories be stricken out and that this defendant be dispensed with the necessity of answering the same.

It prays for all rules, orders and decrees needful, and for cost and general relief.

J. C. PUGH & SON,
Atty. for Standard Oil Co. of La.

Indorsed:—Motion of defendant, Standard Oil Company of Louisiana to Strike Out Interrogatories Nos. 25 and 26. Filed Feb. 6, 1918.

B.

67 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1171, In Equity.
Mrs. Lydia Hanszen McMullen, et al., Defendants.

In the above numbered and entitled cause, now comes the Pure Oil Operating Company, through W. J. Higgins, its Treasurer, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Well No. 1 commenced April 30th, 1910, completed September 10th, 1910; Well No. 5 commenced November 15, 1913, completed January 17th, 1914.

To Interrogatory No. 2, defendant answers:

The production of said wells as given in said amended answer is estimative. The production of oil run from the land in controversy for account of this defendant up to August 1st, 1917, was 50,708.05 (7/8 of the total production), of the value of \$40,695.80.

To Interrogatory No. 3, defendant answers:

(a) Up to August 1st, 1917, the number of barrels of oil run from the land in controversy, for account of this defendant, was 50,708.05 (7/8 of the total production) of the value of \$40,695.80;

(b) From August 1st, 1917, to January 1st, 1918, the number of barrels of oil run from the land in controversy, for account of this defendant, was 504.46 barrels of oil of the value of \$1001.75.

The estimated production run for account of this defendant from Wells Nos. 1 and 5 was as follows:

To August 1st, 1917. From Aug. 1, 1917.		
Well No. 1	44,010.70 bbls.	387.27
Well No. 5	6,697.35 bbls.	54.13
	<hr/>	<hr/>
	50,708.05 bbls.	441.40

68 To Interrogatory No. 4, defendant answers:

Well No. 1 was run in connection with Well No. 4 (which is not involved in this suit) from January, 1916, to August 1st, 1917.

Well No. 5 was run in connection with Well No. 2 (which is not involved in this suit) from January, 1916, to August 1st, 1917.

To Interrogatory No. 5, defendant answers:

No.

To Interrogatory No. 6, defendant answers:

The total run from Wells Nos. 1, 2 (not involved in this suit), 4 (not involved in this suit) and 5, for account of this defendant (or 7/8—the remaining 1/8 being for account of its lessors) up to August 1st, 1917, was as follows:

No. 1, from October, 1910, to December, 1915, inc.	41,657.03 bbls.
No. 4 (not involved in this suit) produced 63,450.93 barrels before it was run in connection with Well No. 1.	
Nos. 1 and 4, from January, 1916, to August, 1917	7,061.02
Nos. 5 from January, 1914, to December, 1915, inc.	5,564.38
Nos. 2 and 5 from December, 1915, to August, 1917	7,930.80

(b) The production from the wells in controversy was estimated by dividing the combined runs in the proportion of the estimated daily capacity of the wells.

To Interrogatory No. 7, defendant answers:

The estimated number of barrels of oil run from said wells, for account of this defendant, up to January 1st, 1918, was 51,149.45 barrels, of the value of \$41,572.33. The value as given is approximate to this extent: it is the exact value of the estimated number of barrels, based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 8, defendant answers:

Its 7/8 of the production of the wells in suit was sold to the Gulf Refining Company of Louisiana up to the first of March, 1912, and subsequent to that date, to the Standard Oil Company of Louisiana; 7/8 being the interest owned by this defendant.

To Interrogatory No. 9, defendant answers:

17,989.73 barrels of oil of the value of \$10,227.80.

69 To Interrogatory No. 10, defendant answers:
33,159.72 barrels of oil of the value of \$31,344.53.

To Interrogatory No. 11, defendant answers:

The total price received by this defendant for its 7/8 of the oil produced by the wells in controversy was \$41,572.33, \$10,227.80 being received from the Gulf Refining Company of Louisiana, and \$31,344.53 from the Standard Oil Company of Louisiana.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 13, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana, for account of this defendant, was 17,989.73 barrels of oil of the value of \$10,227.80, up to March 1st, 1912.

To Interrogatory No. 15, defendant answers:

The quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana, for account of this defendant, up to January 1st, 1918, was \$33,159.72 barrels of the value of \$31,344.53.

To Interrogatory No. 16, defendant answers:

Yes.

To Interrogatory No. 17, defendant answers:

Yes.

To Interrogatory No. 19, defendant answers:

The quantity of oil taken and removed by the Gulf Refining Company of Louisiana from the wells involved in the suit, for account of this defendant, was 17,989.73 barrels of the value of \$10,227.80.

To Interrogatory No. 26, defendant answers:

The actual cost to this defendant of drilling, equipping and operating said wells up to August 1st,

1917, was	\$59,028.23;
70 Forward	\$59,028.23

The Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana purchased from this defendant its 7/8 of the total production of said wells, or 50,708.05, up to August 1st, 1917, for	40,695.80
---	-----------

Or a net loss to August 1st, 1917 ...	\$18,332.43
---------------------------------------	-------------

To Interrogatory No. 28, defendant answers:

No moneys were paid out as royalty by this defendant to any of the other defendants herein, but in accordance with its lease from said co-defendants, this defendant delivered as royalty in tanks, from which the oil was purchased by the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, to the credit of the said lessors, one-eighth of the oil produced from said wells, which said oil was sold by the said co-defendants to the said pipe line companies, part of which, defendant is informed, said purchasing companies have paid, and other parts of which, according to defendant's information, said purchasing companies are holding, pending the result of this suit; the amounts paid and the amounts withheld being unknown to this defendant.

The total value of the oil extracted from said land, for account of this defendant, up to January 1st, 1918, was \$41,572.33, of which amount it has received \$31,037.41, the remaining \$10,534.92 being held by the Standard Oil Company of Louisiana, to the credit of this defendant, pending the result of this suit.

W. J. HIGGINS.

Sworn to and subscribed before me on this the 13th day of April, 1918.

HILDA R. SAUER,

(Seal)

Notary Public in and for Allegheny County, Penn.

My commission expires at end of next session of Senate.

Answer of Pure Oil Operating Company to Interrogatories. Filed Apr. 20, 1918.

B

71 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant.

vs. No. 1168, In Equity.

Mrs. Lydia Hanszen McMullen, et al., Defendant.

In the above entitled matter Amos K. Gordon, Secretary and Treasurer of the Standard Oil Company of Louisiana, appears and answers the interrogatories propounded to the Standard Oil Company of Louisiana, (except Nos. 25 and 26—a motion having been made to strike them out) as follows:

Interrogatory No. 8: Is it not a fact that up to the 1st of March, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company to the Gulf Refining Company of Louisiana, and that after March 1st, 1912, the production of said wells was sold by the Pure Oil Operating Company of Louisiana. If the production of said oil was not sold to said Companies at the periods mentioned, state when said production was sold and to whom?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That it has no information as to the sale of oil from the property referred to prior to February 27, 1912, but on that date it began to take oil from the wells in question.

Interrogatory No. 10: State the quantity and value of the oil extracted from the land in controversy which was sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the annexed statement marked "Exhibit A" shows the quantity and value of the oil bought by it from the Pure Oil Operating Company from February 27, 1912, (date of first run) to August 1, 1917.

Interrogatory No. 12: Was not the said oil sold by the Pure Oil Operating Company to the Standard Oil Company of Louisiana delivered to said Standard Oil Company of Louisiana on the land where it was produced, that is, on the property in controversy, by transfer from a tank, or tanks, in which the oil was stored, to a pipe line belonging to the Standard Oil Company

of Louisiana, and was not the said oil taken away and removed from the land in controversy by the said Standard Oil Company of Louisiana?

72 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, answers: Yes.

Interrogatory No. 15: What was the quantity and value of the oil taken away and removed from the property in controversy by the Standard Oil Company of Louisiana?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, answers: That the annexed statement shows the quantity and value of the oil taken and removed by it from the property in controversy.

Interrogatory No. 17: Is it not a fact that an agent, representative or employee of the Standard Oil Company of Louisiana, went upon the land in controversy at the time of any pipe line run or runs, for the purpose of gauging the quantity of oil transferred from the tank or tanks, to the pipe line of said Standard Oil Company of Louisiana, and did not said gauger measure, or ascertain, the amount of oil run from said tank or tanks to said pipe line? If the amount of oil purchased by the Standard Oil Company of Louisiana from the Pure Oil Operating Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the

agent of this defendant went on the land in controversy and gauged the oil bought by it in tanks supplied by the operator and run the same into its pipe line, as stated in said interrogatory.

Interrogatory No. 18: In the answer of the Standard Oil Company to the bill of complaint it is stated that 168,066.94 barrels of oil of the value of \$156,251.33 was taken from it by the parties in this case, but that the Standard Oil Company of Louisiana does not know from which well the said oil was taken. Is it not a fact that the oil referred to in said answer was taken from the property in controversy in this cause? If you state in your answer to this question that the said oil was taken from the wells in suit, and other wells not in suit, then state the names and location of the wells not in controversy from which any of said oil was taken, and state how much oil was taken from the wells involved in this suit.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the facts are as stated in its answer to this suit, which is on file and of record. This defendant bought the oil stored in tanks by the operator. It was advised that the oil was taken from the land in controversy, but it has no information as to the number of wells drilled on said property, or from what particular wells the oil in question was taken. Definite information as to this matter can be obtained from the operator.

Interrogatory No. 20: In the answer of the Standard Oil Company of Louisiana to the bill of complaint it is stated that the sum of \$105,021.49 has been paid to the claimants of said oil, and that \$51,229.84 is held for payment to the rightful owner. Please state the names and

addresses of the persons, firms, or corporations to whom said payments have been made, and for whose account such moneys are now being held. Also state the amount of money now held by the Standard Oil Company of Louisiana out of the production of oil from the land in controversy and for whose account such moneys are held.

73 In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement marked Exhibit "A", and the division and transfer orders marked Exhibit "B", annexed hereto, will give all the information inquired about in this interrogatory.

Interrogatory No. 21: State whether or not the Standard Oil Company of Louisiana is engaged, and was engaged as the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

In answer to this interrogatory, the defendants, the Standard Oil Company of Louisiana, states: That it is engaged, and was at the time the oil was taken, in the manufacture and sale, as well as the production, of oil, but it is unable to state just what disposition was made of the oil purchased by it from said property; but the oil taken from the property in controversy having been of a light character was probably manufactured, although all the oil taken from wells in this locality was run into the pipe line and it could not be stated with certainty that this particular oil was manufactured.

Interrogatory No. 23: What are the principal products manufactured from petroleum, or crude oil?

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the principal products manufactured from petroleum, or crude oil, are what is commercially known as gasoline, kerosene, engine distillate, lubricating oils of various grades, gas oil, fuel oil, paraffine and coke.

Interrogatory No. 28: How much money was paid by you as royalties to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose account they are now being held.

In answer to this interrogatory, the defendant, the Standard Oil Company of Louisiana, states: That the statement referred to will show all of the money paid to the royalty owners, and furnish such other information as is inquired about in this interrogatory.

A. K. GORDON,

Secretary and Treasurer.

Sworn to and subscribed before me on this the 8th day of February, 1918.

T. B. BEALE,

(Seal)

Notary Public, in and for the
Parish of East Baton Rouge,
Louisiana.

74 **Production Statement of the Pure Oil Operating Co. Wells, Located on Hanszen Mineral Claim, Sec. 3 and 4, Tp. 20, R-16, Caddo Parish, La., from Feb. 27, 1912, (Date of 1st Run) to August 1st, 1917, Showing Disposition made of the Funds due each Party at Interest.**

Name	Proportion	Paid under Bond	
		Barrels	Money
The Pure Oil Operating Co.	7/8	106,215.07	95,803.25
L. Hanszen	1/32 (Below)		
Sam W. Mason	1/64	2,626.03	2,441.40
D. P. Eubank	1/64	1,619.16	1,437.56
R. L. Stringfellow	1/32	1,493.59	1,141.61
Natalie Oil Company	1/32 (Below)		
H. E. Barnes and H. L. Heilperin	1/32	4,787.55	4,197.67
Total		116,741.40	105,021.49

Name	Payments Withheld		Total Production.	
The Pure Oil Operating Co.	40,842.53	40,916.78	147,058.60	136,720.03
L. Hanszen	5,252.009	4,882.82	5,252.09	4,882.82
Sam W. Mason			2,626.03	2,441.40
D. P. Eubank	1,006.90	1,003.86	2,626.06	2,441.42
R. L. Stringfellow	3,758.48	3,741.18	5,252.07	4,882.79
Natalie Oil Co.	464.54	685.20	464.54	685.20
H. E. Barnes and H. L. Heilperin			4,787.55	4,197.67
Totals	51,325.54	51,229.84	168,066.95	156,251.33

Compiled by J. W. C.
 Checked by H. C. McC.
 Typed by E. A. H.
 Rechecked by H. C. McC.
 and J. W. C.

Exhibit "A."

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EXHIBIT "B."

Shreveport, La., Feb. 26, 1912.

To The Standard Oil Company of La.:

The undersigned certify and guarantee that they are the legal owners of.....Wells Nos. 1 and up on the Hanszen Farm, Sec. 4, Township 20 R. 16 Caddo Parish, State of Louisiana, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below:

Division of		
Credit to	Interest.	Postoffice Address.
The Pure Oil Operating Co.	7/8	Pittsburgh, Pa.
L. Hanszen, Trustee for S. W.		
W. Mason, D. P. Eubank		
and Herself	1/16	Shreveport La.
H. E. Barnes	1/32	Shreveport La.
R. L. Stringfellow	1/32	Shreveport La.
Tank Nos.		

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this division order shall become the property of the Standard Oil Company

of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from wells into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

THE PURE OIL OPERATING CO.,

- (1) By E. H. JENNINGS, Treasurer.
- (2) R. L. STRINGFELLOW,
- (3) SAM W. MASON,
- (4) H. E. BARNES,
- (5) D. P. EUBANK,
L. HANSZEN.
L. HANSZEN, Trustee.

Witness:

W. J. HIGGINS

S. L. CRONIN (2, 3, 4 & 5).

Approved:

J. C. PUGH.

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March 1, 1916.

To The Standard Oil Company of La.:

The undersigned have this day sold 1/32nd interest in Wells Nos. 1 and up, on Hanszen Farm, Secs. 3 and 4, Tp. 20, R. 16, Caddo Parish, State of Louisiana, as below.

Interest.	Name.	Postoffice Address.
1/32	Natalie Oil Company	Shreveport, La.

You will therefore give credit for oil received from said interest as above.

Tank Nos.

H. E. BARNES,
ESTATE OF H. L. HEILPERIN,
By MARX. BLUESTEIN,
J. A. THIGPEN, Executors.

The undersigned hereby certifies and agree that....., the legal owner of the well interest above transferred, and hereby authorize the Standard Oil Co. of La., until further notice, to receive for purchase oil therefrom pursuant to the above transfer.

The Standard Oil Company of Louisiana is hereby authorized, until further notice, to receive oil from said well interests for purchase from said parties severally in the proportions named, subject to the following conditions:

First.—The oil run in pursuance of this order shall become the property of the Standard Oil Company of Louisiana as soon as the same is received into its custody.

Second.—The oil received in pursuance of this division order shall be paid for to the well owners, or their assigns, in proportion to their respective interests shown above, at the price quoted by the Standard Oil Company of Louisiana for the same kind and quality of oil, on the day of the receipt thereof.

Third.—The Standard Oil Company of Louisiana shall deduct two per cent. from all oil received from said well interests into its custody, on account of dirt and sediment, and in addition, shall deduct one-twentieth of one per cent. for each degree of artificial heat above normal temperature to which said oil shall have been subjected and oil shall be steamed when necessary to render it merchantable.

Fourth.—The undersigned agree, in case of any adverse claim of title, to furnish the Standard Oil Company of Louisiana satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said Standard Oil Company of Louisiana may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

NATALIE OIL COMPANY,

By J. A. THIGPEN, Prest.

Witness:

W. B. WINSTON,
FRANK SHROPSHIRE.

Approved:

J. C. PUGH & SON.

77 Indorsed: Answer of Defendant, Standard Oil Co. of La., to Interrogatories. Filed Feb. 11, 1918.

78 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1171, In Equity.
Mrs. Lydia Hanszen McMullen, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third Vice-President, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 8, defendant answers:

Not having information with respect to the same, this defendant cannot answer this interrogatory, except to report that up to March 1st, 1912, the production of the wells in suit was sold by the Pure Oil Operating Company and locators to the Gulf Refining Company of Louisiana.

To Interrogatory No. 9, defendant answers:

17,989.73 barrels of oil, of the value of \$10,227.80, representing 7/8 of the production from said wells to March 1st, 1912.

To Interrogatory No. 12, defendant answers:

Yes.

To Interrogatory No. 14, defendant answers:

20,559.69 barrels of oil, of the value of \$11,688.91

To Interrogatory No. 16, defendant answers:
Yes.

To Interrogatory No. 19, defendant answers:
20,559.69 barrels of oil, of the value of \$11,688.91.

To Interrogatory No. 22, defendant answers:
The Gulf Refining Company of Louisiana is not now, nor was it at the time of the purchase of the said oil, engaged in the manufacture of any products of oil.

To Interrogatory No. 23, defendant answers:
Gasoline, kerosene and lubricating oils.

79 To Interrogatory No. 24, defendant answers:
The Gulf Refining Company of Louisiana never manufactured any products from any oil extracted from the land in controversy.

To Interrogatory No. 26, defendant answers:
The Gulf Refining Company of Louisiana made no profit from the sale of any of the crude oil extracted from the land in controversy. It purchased 20,559.69 barrels of oil, for its value, \$11,688.91, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of ten cents per barrel, or \$1,168.90, which represents the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company. No products manufactured.

To Interrogatory No. 27, defendant answers:
(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company;

(b) Made no profit;

(c) Delivery was made to the Gulf Pipe Line Company at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same; of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 28, defendant answers:

The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil. It purchased the said 80 oil from the following parties in the following proportions, and paid for said oil in the same proportions, to-wit:

Pure Oil Operating Company		7/8
D. P. Eubanks	1/8 of 1/8	
S. W. Mason	1/8 of 1/8	
L. Hanszen	1/4 of 1/8	1/8
H. E. Barnes	1/4 of 1/8	
R. L. Stringfellow	1/4 of 1/8	

No royalty is being held up.

C. R. MINOR.

Sworn to and subscribed before me on this the 13th day of March, 1918.

(Seal) J. A. THIGPEN,
Notary Public in and for Caddo
Parish, Louisiana.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.

81 United States District Court, Western District
of Louisiana.

United States,
vs. No. 1171.
Mrs. Lydia H. McMullen, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of this cause, the Court of its own motion appoints Edward E. Randolph, Esq., Special Master.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

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No. 1171. PLFF. L.

H. H. Cook, Stenographer.
Suit No. 1171.

C. R. vs. Lydia Hansen McMullen, et al.

Statement of the Oil Produced by Hansen Mineral Oil
Wells Nos. 1 and 3 from October, 1910, to December
31, 1917, and Value of the Oil.

	Barrels	Value.
Total Oil produced	38,688.74	\$67,770.89

Statement of Oil Run by the Gulf Refining Co. of Louisiana from October, 1910, to February 27, 1912, Divisions of Oil and Value.

Total		20,550.00	\$11,000.00
Lydia Hansen McMullen	1/32	682.00	\$65.20
Sam W. Mason	1/64	321.20	\$32.40
D. P. Eubanks	1/64	321.20	\$32.40
R. L. Stringfellow	1/32	682.00	\$65.20
H. E. Barnes	1/32	682.00	\$65.20

Value of Royalty paid by the Gulf Refining Co. of La.		\$1,000.00
Pure Oil Operating Co.	7/8	17,000.00
		\$10,000.00

Statement of Oil Run by Standard Oil Company of Louisiana from February 27, 1912, to December 31, 1917,
Division of Oil and Value.

Total oil run		38,074.05	\$36,081.90
Lydia Hanszen McMullen	1/32	1,189.81	1,127.56
Sam W. Mason	1/64	594.90	563.78
D. P. Eubanks	1/64	594.90	563.78
R. L. Stringfellow	1/32	1,189.81	1,127.56
Natalie Oil Co. H. E. Barnes, and H. L. Heilperin	1/32	1,189.81	1,127.56
Value of Royalty paid and held in suspense by the Standard Oil Co. of Louisiana			\$4,510.24
Pure Oil Operating Co.	7/8	33,314.82	\$31,571.66
Total Royalty paid by the Gulf Refining Co. of La. and the Standard Oil Co. of La. and held in suspense by the Standard Oil Co. of La.			\$5,971.36
Total Oil and value repre- senting the Pure Oil Oper- ating Co.'s 7/8		51,304.52	41,799.46
Cost of drilling and equip- ing Wells Nos. 1 and 5.		\$26,306.38	
Cost of operating same to Dec. 31, 1917		\$28,610.32	\$54,916.70

Filed Jan. 21, 1919.

83

Suit No. 1171.

Summary.

Statement of Pure Oil Operating Company's 7/8 of Oil
and Value from Hanszen Mineral No. 1 and 5, and
Cost of Drilling, Equipping and Operating Same to
December 31st, 1917.

Hanszen No. 1 as
an Entity

Net Bbbls. Net Value.

October, 1910, to Dec. 1915 41657.03 \$30,628.21

Hanszen No 5
as an Entity

January, 1914 to Dec. 1915 5564.38 4,969.04 \$35,597.25

Hanszen No. 1
Operated with No. 4.

January, 1916, to Dec. 1917

35.5% Total production

and value 2885.92 4,484.00 4,484.00

Hanszen No. 5
Operated with No. 2.

January 1916 to Dec. 1917.

14.4% Total production

and value 1197.19 1,718.21 1,718.21

Total 51304.52 \$41,799.46

1/8 Oil and value paid by Standard Oil Company of Louisiana and Gulf Refining Company of Louisiana.

No. 1	Cost of drilling and equipping	\$15,324.22	
No. 1	Cost of operating Aug. 1911,		
	to Dec. 31, 1917	18,512.56	
No. 5	Cost of drilling and equipping	10,982.16	
No. 5	Cost of operating July, 1914,		
	to Dec. 31, 1917	10,097.76	\$54,916.70

Total.

Well No. 1	Not drilled—(Error)		
	Well commenced	Completed	Ceased
Well No. 2	June 20, 1911	Aug. 3, 1911	
Well No. 3	May 4, 1912	June 7, 1912	Jan., 1914
Well No. 4	Nov. 20, 1913	Dec. 31, 1913	
Well No. 5	Jan. 13, 1914	Feb. 25, 1914	Dry

84 In the District Court of the United States for the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1171, In Equity.
Mrs. Lydia Hanszen McMullen, et als., Defendants.

For defendant, Standard Oil Company of Louisiana, it is urged for exception to the Report of Special Master:

First: That a judgment should be awarded it against its co-defendants, who were called in warranty, so as to avoid a multiplicity of suits, and to finally terminate all of the issues between the respective defendants without the necessity of resorting to additional litigation.

Second: Interest should only have been allowed from the date of the finality of any judgment which may be rendered in this matter.

Wherefore, it prays that these exceptions be sustained and the recommendations of the Special Master be revised accordingly.

J. C. PUGH & SON,
Attorneys for Defendant, Stand-
ard Oil Company of La.

Indorsed:—Exception to Report of Special Master. Filed Jan. 23, 1919, 10:20 A. M. o'clock.

85 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1171, In Equity.
Mrs. Lydia H. MacMullen, et al., Defendants.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

I.

That the Master in said report has certified and recommended that this defendant be held liable to the Government for the value of the oil purchased by it from the Pure Oil Operating Company and produced by that Com-

pany from the premises in controversy; whereas the Master should have held that no money judgment should be rendered against this defendant, since it was a mere purchaser of the oil produced by the said Pure Oil Operating Company.

2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered by it, as to the liability which the Master certifies as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

3.

That the said Master has in said report certified that this defendant should pay interest upon the amount of judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

86 Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,

Solicitors for Gulf Refining Company of Louisiana.

Indorsed:—Exceptions of the Gulf Refining Company of Louisiana to the Report of the Special Master. Filed Jan. 30, 1919.

B.

Now comes the Pure Oil Operating Company, one of the defendants herein, and excepts to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January 1919 and for cause of exception shows:

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that date so withdrawn.

That the Master in said report has certified that the cost of drilling and equipping and operating said wells should not be deducted from the total value of the production from the property but that regardless of the amount of such expenses the Government is entitled to judgment for the value of all of the royalty oil; whereas the Master should have reported that the cost of drilling and equipping and operating the wells should be deducted from the total value of the whole production.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

judgment rendered against it at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore, defendants prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for Pure Oil Oper-
ating Co.

88 Indorsed:—Exceptions of the Pure Oil Oper-
ating Company to the Report of the Special Mas-
ter. Filed Jan. 30, 1919.
B.

89 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia H. MacMullen, et al., Defendants.

Now come Mrs. Lydia H. McMullen, H. Earl Barnes, Sam W. Mason, R. L. Stringfellow, D. P. Eubank, and J. A. Thigpen and S. L. Herold, as liquidators of the

Natalie Oil Company, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time their location was made; whereas he should have reported that said lands were not at that date so withdrawn.

2.

That the Master in said report has certified that the cost of drilling and equipping and operating said wells should not be deducted from the total value of the production from the property, but that, regardless of the amount of such expenses, the Government is entitled to judgment for the value of all of the royalty oil; whereas the Master should have reported that the cost of drilling and equipping and operating the wells should be deducted from the total value of the whole production.

3.

That the said Master has in said report certified that these defendants should pay interest upon the amount of judgment rendered against them, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against these defendants, interest should run only from the date that same is liquidated by decree of this Court.

90

Wherefore, defendants pray that these exceptions be sustained and that judgment be rendered in their favor accordingly.

THIGPEN & HEROLD,

Solicitors for Defendants.

Indorsed:—Exceptions of Mrs. Lydia H. MacMullen, H. Earl Barnes, Sam W. Mason, R. L. Stringfellow, D. P. Eubank, J. A. Thigpen & S. L. Herold to the Report of the Special Master. Filed Jan. 30, 1919.
B.

91 In the District Court of the United States for
the Western District of Louisiana.

United States of America,
vs. No. 1171.
Mrs. Lydia Hanszen McMullen, et al.

Now into this Honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al., No. 1172, on

the docket of this Honorable Court, being plaintiffs exhibits "A" "B" "C" "D" "E" "F 1, 2, 3, 4, 5," "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T," which said exhibits were by agreement of counsel (record p. 2) made a part of the record in this cause. This Court held in the said Mason case that the withdrawals included Township 22 North, Range 15 West, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

92 2. The answers of the defendants to the bill of complaint and the notice of mineral location offered by the defendants (record p. 36), show that the location was made on April 2, 1910. The testimony shows that the work leading to the discovery was not begun until April, 1910, actual drilling of the well having commenced July 15, 1910 (testimony of S. L. Cronin, record p. 28 to 46 inclusive).

Plaintiff avers that the drilling of said wells and the removal of oil from the said land, by the defendants, were in violation of said withdrawal orders.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. There was affirmative evidence in the record showing that the defendants were not in good faith in extracting and removing the oil from the land in controversy, because the record shows that the defendants, including

the Pure Oil Operating Company (which said Company asserted counterclaim allowed by the Master), gave bonds to the Standard Oil Company of Louisiana to protect said Company against adverse claims to the property and to the oil. The bond executed by the Pure Oil Operating Company, for the sum of \$175,000.00, contained a specific agreement to indemnify and hold harmless the Standard Oil Company of Louisiana from liability to the United States of America (see bond attached to answer of the Standard Oil Company of Louisiana to the interrogatories filed herein).

5. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908 (see testimony of Sam W. Mason, one of the mineral locators, record p. 37); also testimony of S. L. Cronin, representative of the Pure Oil Operating Co., record p. 42). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a) Against the Pure Oil Operating Company and the Gulf Refining Co. of Louisiana, in solido for the value of the oil extracted by the Pure Oil Operating Co., and run from the land by the Gulf Refining Co. of Louisiana, less the royalties paid of \$1461.12, all as shown by the Master's report \$10,227.79

(b) Against the Pure Oil Operating Co. and the Gulf Refining Co. of Louisiana, in solido, and each of the royalty claimants of the Gulf Refining Co. of Louisiana, in solido, with said companies, for the amounts paid to the several royalty claimants, all as shown by the Master's report, aggregating \$1,461.12

(c) Against the Pure Oil Operating Co. and the Standard Oil Co. of Louisiana, in solido, for the value of the oil extracted by the Pure Oil Operating Company, and run from the land by the Standard Oil Co. of Louisiana, less the royalties paid of \$4510.24, all as shown by the Master's report \$31,571.66

(d) Against the Standard Oil Co. of Louisiana and the Pure Oil Operating Co., in solido, and the several royalty claimants of the Standard Oil Co., of Louisiana, in solido with said companies, for the amounts paid to the said royalty claimants, all as shown by the Master's report, aggregating \$4,510.24

Said sums aggregating \$47,770.81, being total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney
General.

- 94 Indorsed:—Plaintiff's Exceptions to the Master's Report. Filed Jan. 30, 1919.

B

- 95 United States of America,
 vs. No. 1171, in Equity.
 Mrs. Lydia H. McMullen, J. A. McMullen, H. Earl Barnes,
 Sam W. Mason, Robert L. Stringfellow, Dillard P.
 Eubank, Pure Oil Operating Company, Natalie Oil
 Company, Gulf Refining Company of Louisiana, Stan-
 dard Oil Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lot Number Three (3), of Section Three (3) and Lots Numbers Three, Four and Five (3, 4 and 5) of Section Four (4), in Township Twenty (20) North, of Range Sixteen (16) West Louisiana Meridian, Louisiana, containing thirty-seven and seventy-nine one-hundredths (37.79) acres, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or offer

form of appropriation under the public land or mineral laws of the United States.

III. That the mineral location of date April 2, 1936, recorded April 2, 1936, in Book 29, page 267, made by defendants, Mrs. Lydie Hanson, Sam W. Mason, William F. Edmund, H. East Barnes and Robert L. Stringfellow, and the lease made by said location April 29, 1936, to E. H. Jennings, recorded in Book 39, page 455, and

36 the transfer of said lease by said E. H. Jennings to the Pure Oil Operating Company, as yet not recorded in Book 46, page 465, all of said instruments having been recorded on the Conveyance records of the Parish of Cadeo, State of Louisiana, he and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and to that extent, the said mineral locations and leases are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Mrs. Lydie M. McMahon, J. A. McMahon, H. East Barnes, Sam W. Mason, Robert L. Stringfellow, William F. Edmund, Pure Oil Operating Company, Kelsie Oil Company, Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any claim upon plaintiff's title to the same, or to any of the oil, gas or

minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred Eighty-two and 64/100 (\$182.64) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby commanded and ordered to pay to plaintiff, the full sum of One Hundred Eighty-two and 64/100 (\$182.64) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and

Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Hundred Sixty-five and 28/100 (\$365.28) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Sam W. Mason, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Sixty-three and 78/100 (\$563.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

98 XIII. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to

plaintiff, the full sum of Five Hundred and Sixty-three and 78/100 (\$563.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIV. That the United States of America do have and recover of the Standard Oil Company of Louisiana and Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XV. That the United States of America do have and recover of the Standard Oil Company, Natalie Oil Company and H. Earl Barnes, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff the full sum of One Thousand One Hundred and Twenty-seven and 56/100 (\$1,127.56) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XVI. The rights of the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana to recover the royalties paid by them to the other defendants herein be, and the same are hereby reserved as set forth in the Master's report.

XVIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and

that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

99 XVIII. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

XIX. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells, and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Thousand (\$5,000.00) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may

come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do
 100 and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

XX. That the rights of the Standard Oil Company of Louisiana against its warrantors be, and the same are hereby, reserved.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
 United States Judge.

Indorsed:—Decree. Filed Aug. 12, 1919.
 B.

101 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1171, In Equity.
Mrs. Lydia H. MacMullen, et al., Defendants.

The petition of Mrs. Lydia H. MacMullen, Sam W. Mason, D. P. Eubank, R. L. Stringfellow, H. E. Barnes, Natalie Oil Company and the Succession of H. L. Heilperin, defendants herein, shows:

1.

That they are aggrieved by the decree entered herein and signed by Your Honor on the day of August, 1919, condemning them in solido to pay to the Plaintiff the sum of Fifty-nine Hundred and Seventy-one and 36/100 (\$5,971.36) Dollars, together with five per cent (5%) per annum interest from January 11th, 1919, and all costs of suit; and aver that error has been committed in rendering of the said decree in this, to-wit:

2.

That the undisputed evidence as found and reported by the Master is to the effect that the oil produced and sold from the property in controversy aggregated the sum of Forty-seven Thousand Seven Hundred and Sixty-nine and 81/100 (\$47,769.81) Dollars, and that the cost of producing the said oil amounted to Fifty-four Thousand Nine Hundred and Sixteen and 70/100 (\$54,916.70) Dollars.

3.

That, as shown by the testimony and the said Master's report, the cost of drilling, equipping and operating the

wells in controversy exceeded largely the total amount of oil produced from the wells, so that under the finding by the Master and by Your Honor, the government is entitled to no money judgment, and, accordingly, petitioners show that the recommendation of the Master, approved by the opinion herein handed down by your Honor, is erroneous in holding that your petitioners by their receipt of royalties from the principal defendant, the Pure Oil Operating Company, are liable for any money judgment whatever to the plaintiff when said Company, by reason of the fact that the cost of producing the oil largely exceeds the value of the oil produced, is not liable.

Wherefore, petitioners pray for a rehearing of this cause, submitting themselves to any order that may be made by Your Honor should the petition be finally denied.

THIGPEN & HEROLD,
Solicitors for Defendants.

ORDER.

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of Court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,
United States District Judge.

August 4, 1919.

Indorsed:—Petition for Rehearing. Aug. 13, 1919. Filed.

Chancery Order Book.

United States District Court for the Western District of
Louisiana.

New Orleans, Louisiana, December 4th, 1919.

United States of America,
vs. No. 1171, In Equity.
Mrs. Lydia H. McMullen, et al.

In this cause the Motion for Re-hearing which was heretofore filed, came on this day for hearing before Hon. Rufus E. Foster, the Plaintiff being represented by Robert A. Hunter, and the Defendant by S. L. Herold, after argument, and consideration by the Court,

It is ordered, that this Motion be overruled.

104 In the District Court of the United States for
the Western District of Louisiana.

United States of America,
vs. No. 1171, In Equity.
Mrs. Lydia Hanszen McMullen, et al.

To the Honorable, the Judge of the District Court of the
United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States
of America, plaintiff in the above numbered and entitled
cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, and that in said decree there was in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that an appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the At-

ORDER.

The foregoing petition for an appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed an appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

103

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S AP-
PEAL.

In the District Court of the United States for the West-
ern District of Louisiana.

United States of America,
vs. No. 1171, In Equity.
Mrs. Lydia Hanszen McMullen, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for an appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Pure Oil Operating Company for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an
offset or counterclaim, the cost of the production
106 of said oil and in not entering a decree in favor
of plaintiff for the full value of the oil extracted
and removed from the land in controversy, because the
said land had been withdrawn from any appropriation
whatever by orders of the President of the United States,
dated respectively December 15, 1908, and July 2, 1910,

which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said wells were drilled after the issuance of both of said withdrawal orders in violation thereof, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court erred in allowing the said offset or counterclaim because the evidence shows that the defendants acted in bad faith in extracting and removing said oil.

IV.

The Court further erred, in any event, in finding and holding that the said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the wells in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Petition for Appeal, Order Allowing same, and Assignment of Errors. Filed Jan. 3, 1920.

108 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 1171, In Equity.

Mrs. Lydia H. McMullen, et al., Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, Sitting within and for the Shreveport Division:

All the defendants, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on December 4th, 1919, do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors,

which is filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security be required of them to perfect said appeal be made.

THIGPEN & HEROLD,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of Eight Thousand Dollars.

Jan. 10/20.

RUFUS E. FOSTER,
United States District Judge.

Indorsed:—Motion and Order for Appeal. Filed Jan. 12, 1920.

B.

SUPERSEDEAS BOND ON APPEAL.

109 In the District Court of the United States for

United States of America, Plaintiff,

vs.

No. 1171, In Equity.

Mrs. Lydia H. McMullen, et al., Defendants.

Know all men by these presents: That we, Lydia H. McMullen, J. A. McMullen, H. Earl Barnes, Sam W. W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Co.; Natalie Oil Co.; Gulf Refining Co. of La., Standard Oil Co. of La., as principal and the National Surety Co., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Eight Thousand Dollars, for which well and truly to be made, we hereby bind ourselves our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 5th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and Mrs. Lydia H. McMullen, et al., were defendants, numbered on the Equity docket 1171, a decree was rendered and signed against the said Mrs. Lydia H. McMullen, et al, and a rehearing thereof refused on Dec. 4th, 1919, and the said Mrs. Lydia H. McMullen, et al, having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit:

Now if the said Mrs. Lydia H. McMullen, et al, shall prosecute such appeal to effect and answer all damages and costs if they fail to make their pleas good, then the above
 110 tion to be void; otherwise to remain in full force
 and effect.

MRS. LYDIA H. McMULLEN,
 By S. L. HEROLD, Atty.
 J. A. McMULLEN,
 By S. L. HEROLD, Atty.
 H. EARL BARNES,
 By S. L. HEROLD, Atty.
 SAM W. MASON,
 By S. L. HEROLD, Atty.
 ROBT. L. STRINGFELLOW,
 By S. L. HEROLD, Atty.
 DILLARD P. EUBANK,
 By S. L. HEROLD, Atty.
 PURE OIL OPERATING CO.,
 By S. L. HEROLD, Atty.
 NATALIE OIL CO.,
 By S. L. HEROLD, Atty.
 GULF REFINING CO., OF
 LA.,
 By S. L. HEROLD, Atty.
 STANDARD OIL CO. OF LA.,
 By J. C. PUGH, S. L. H., Atty.
 NATIONAL SURETY CO.,
 By MERIWETHER-MAYO IN-
 SURANCE AGENCY,
 By W. T. MAYO, Vice Pres.,
 Attys in fact.

Approved:

RUFUS E. FOSTER,
 U. S. District Judge.

Indorsed: Supersedeas Bond. Filed Jan. 12, 1920.
 B.

111 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1171, In Equity.
Mrs. Lydia M. McMullen, et al., Defendants.

And now, on this the 10th day of January, 1920, come all of the defendants, by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 12th day of August, 1919, and the refusal of a rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendant; and for specification of such errors, show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, April 2nd, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the

property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

The Court erred in awarding judgment for plaintiff for the land.

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

112

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation the amounts paid as royalties.

Ninth.

The Court erred (even though it had been justified in awarding any judgment of any character against defend-

ants or either of them, which is denied) in awarding plaintiff judgment for amount of royalties paid by the Pure Oil Operating Company when the undisputed evidence shows that the cost of extracting the oil from the premises exceeds the total sales of all oil extracted and reduced to possession.

Tenth.

That the Court erred in condemning defendants Gulf Refining Co. of Louisiana and Standard Oil Co. of Louisiana for the value of the oil purchased by them respectively from their co-defendants.

Eleventh.

That the Court erred in holding the mere purchaser of oil produced and reduced to possession by the bona fide possessor of the land liable, by reason of such purchaser, to the plaintiff because adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. C. PUGH,
THIGPEN & HEROLD,
 Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Jan. 10, 1920.
 B.

113

STIPULATION OF COUNSEL.

In the District Court of the United States for the
Western District of Louisiana.

United States of America,

vs.

No. 1171.

Mrs. Lydia Hanszen McMullen, Et. Al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

Whereas, this cause, together with suits numbered 1154, 1156, 1159, 1168, and 1170, were consolidated in the District Court for trial with the case entitled United States v. Sam W. Mason, et al., No. 1172, on the docket of said Court, which suit has likewise been appealed to the United States Circuit Court of Appeals for the Fifth Circuit; and

Whereas, in order to reduce the size of the several transcripts counsel have agreed that the record on appeal in the said cause (No. 1172, United States v. Sam W. Mason, et al.) shall contain and include certain testimony, exhibits, the Master's report, and the opinion of the Court in full, which testimony, exhibits, report and opinion are applicable to all of the cases so consolidated; and

Whereas, counsel have agreed to incorporate in the transcript in this cause only the pleadings, exhibits and other matters specially applicable to this suit; now, therefore:

It is stipulated that the transcript of appeal in the said cause, entitled *United States v. Sam W. Mason, et al.*, No. 1172, on the docket of the United States District Court for the Western District of Louisiana, shall be a part of the record on appeal in this suit, and shall be applicable thereto.

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admissions in the record, it is stipulated that the tract in controversy was embraced in a mineral
 114 location filed by defendants, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

* It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

1. Bill of Complaint.
2. Motion to dismiss by Gulf Refining Co. of Louisiana.
3. Answer of Mrs. Lydia H. McMullen, et al.
4. Answer of Standard Oil Company of Louisiana, and exhibits and bonds thereto annexed.

5. Plaintiff's reply to set off and counterclaim.
6. Amended answer of Mrs. Lydia H. McMullen, et al.
7. Plaintiff's reply to set off and counterclaim asserted by the Pure Oil Operating Co. in amended answer.
8. Motion to dismiss by Standard Oil Company of Louisiana.
9. Order of Court overruling motion to dismiss and sustaining motion to strike out certain interrogatories.
10. Order of Court overruling motion to dismiss and pleas of Gulf Refining Co. of Louisiana.
11. Interrogatories propounded by plaintiff to defendants.
12. Motion of Standard Oil Company of Louisiana to strike out certain interrogatories.
13. Answer of Pure Oil Operating Company to interrogatories.
14. Answers of Standard Oil Company of Louisiana to Interrogatories.
15. Answers of Gulf Refining Company of Louisiana to Interrogatories.
16. Order of Court appointing E. H. Randolph as Special Master in Chancery.
17. Pages 1 and 2 of statement of James W. Neal, Special Agent of the General Land Office, marked plaintiff's Exhibit L, showing quantity and value of oil roy-

alties paid, cost of drilling and operating the wells, together with all the other information given in said statement.

115 18. Exceptions of Standard Oil Company of Louisiana to Master's Report.

19. Exceptions of Gulf Refining Company of Louisiana to Master's report.

20. Exceptions of Pure Oil Operating Company to Master's report.

21. Exceptions of Mrs. Lydia H. McMullen, et al., to Master's report.

22. Plaintiff's exceptions to Master's report.

23. Final decree.

24. Defendants' petition for rehearing.

25. Order of Court overruling petition for rehearing.

26. Plaintiff's petition for appeal, order allowing same and assignment of errors.

27. Defendants' petition for appeal, order allowing same, appeal bond and assignment of errors.

28. This stipulation.

Thus done and signed, this 12th day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

J. C. PUGH,
THIGPEN & HEROLD,
Attorneys for Defendants.

Filed May 14, 1920.

CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit do hereby certify that the foregoing one hundred and fifteen pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is Complainant, and Mrs. Lydia Hanszen McMullen, et al., are defendants, No. 1171, in Equity on the Docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

W. B. LEE, Clerk,
United States District Court,
Western District of Louisiana.

(Seal)

Citations omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes February 24, 1921.

No. 3547.

LYDIA HANSZEN McMULLEN et als.
versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3541.

THE UNITED STATES OF AMERICA, Appellant,
versus

W. W. GREEN et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3542.

HENRY HUNSICKER et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

Hampden Story, for Appellants and Cross-Appellees,
Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3543.

THE UNITED STATES OF AMERICA, Appellant,

versus

ARKANSAS NATURAL GAS COMPANY et als., Appellees.

Appeal from the District Court of the United States for the Western District of Louisiana.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellant.

S. L. Herold and J. A. Thigpen, for Appellees.

No. 3544.

B. R. NORVELL et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3545.

W. H. MATTHEWS et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

No. 3546.

DILLARD P. EUBANK et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States
for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, for Appellants and Cross-Appel-
lees.

Robert A. Hunter, Special Assistant to the Attorney General, for
Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge*:

Each of these cases is so far like the case of *Mason, et al., v. United States, MS. U. S. Circuit Court of Appeals, Fifth Circuit*, that the opinion rendered in the cited case sufficiently discloses the grounds relied on to support the decisions now announced. The decree in each of these cases is affirmed in so far as it was in favor of the plaintiff below, and is reversed in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and the cases are remanded, with direction that the accounting and the decrees be conformed to the views expressed in the opinion above referred to.

Affirmed in part.

Reversed in part.

Judgment.

Extract from Minutes of May 17th, 1921.

No. 3547.

LYDIA HANSZEN McMULLEN et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross-appellees, Lydia Hanszen McMullen, J. A. McMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with supersedeas, and that citation issue as provided

by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

(Signed)

J. A. THIGPEN,

S. L. HEROLD,

Solicitors for said Appellants.

Order.

Let the foregoing petition be granted and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of Seventy Thousand (\$70,000.00) Dollars.

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

LYDIA HANSZEN McMULLEN et als., Appellants and Cross-Appellees,
versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court, which refused to deduct, as an expense of operation of the Pure Oil Operating Company, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Fifteenth.

The Court erred in condemning defendants Gulf Refining Company of Louisiana and Standard Oil Company of Louisiana for the value of the oil purchased by them, respectively, from their co-defendants.

Sixteenth.

The Court erred in holding the mere purchaser of oil produced and reduced to possession by the actual possessor of the land to be liable to plaintiff by reason of such purchase because plaintiff may have been herein adjudged the owner of the land from wells on which such oil had been produced.

Wherefore, the defendants pray that the said decree be reversed and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3547.

Mrs. LYDIA HANSZEN McMULLEN, J. A. McMULLEN, H. EARL BARNES, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That we, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company, Gulf Refining Company of Louisiana, and Standard Oil Company of Louisiana, as principal-, and National Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of Seventy Thousand (\$70,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3547, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in the case of Sam W. Mason et al. vs. United States, No. 3548 on the docket of the Circuit Court of Appeals for the Fifth Circuit; and the said Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Com-

pany of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed) MRS. LYDIA HANSZEN MACMULLEN,
By S. L. HEROLD,
Atty.

(Signed) J. A. MACMULLEN,
By S. L. HEROLD,
Atty.

(Signed) H. EARL BARNES,
By S. L. HEROLD,
Atty.

(Signed) DILLARD P. EUBANK,
By S. L. HEROLD,
Atty.

(Signed) PURE OIL OPERATING COMPANY,
By S. L. HEROLD,
Atty.

(Signed) GULF REFINING COMPANY OF
LOUISIANA,
By S. L. HEROLD,
Atty.

(Signed) STANDARD OIL COMPANY OF
LOUISIANA,
By T. M. MILLING,
Atty.

(Signed) NATIONAL SURETY COMPANY,
By LOUIS COIRON,
Res. Vice-President.

Countersigned by:
[SEAL.] LOUIS VALE,
Res. Asst. Secty.

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 137 to 146 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3547, wherein Lydia Hanszen McMullen and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 136, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order for appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes, Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, Pure Oil Operating Company, Natalie Oil Company of Louisiana, are appellants and cross-appellees, and the United States of America is appellee and cross-appellant, No. 3547 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Lydia Hanszen MacMullen and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

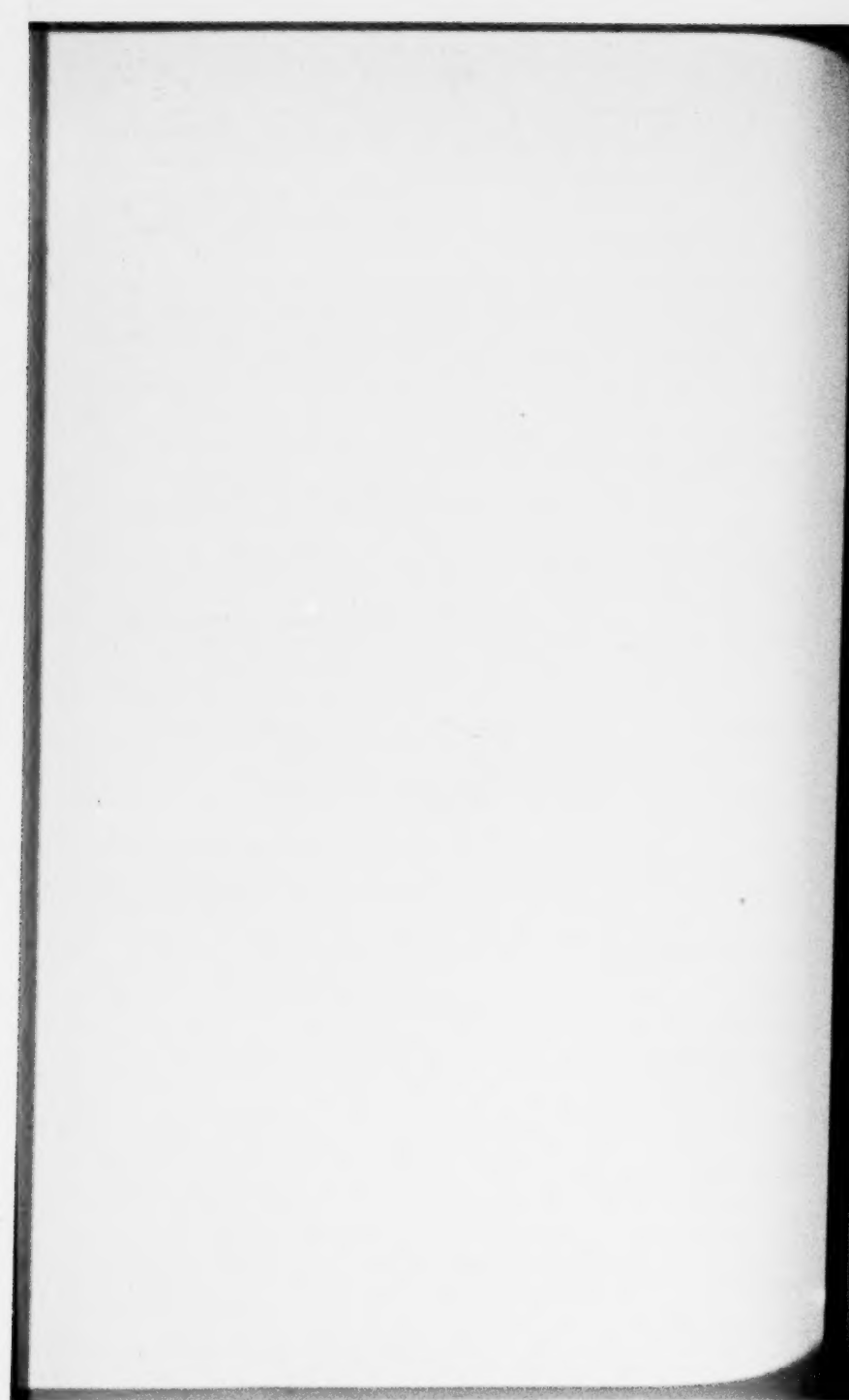
R. W. WALKER,
United States Circuit Judge.

[Endorsed:] No. 3547. United States Circuit Court of Appeals, Fifth Circuit. Lydia Hanszen MacMullen et al., Appellants and Cross-Appellees, vs. The United States of America, Appellees and Cross-Appellants. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Endorsed on cover: File No. 28,353. U. S. Circuit Court Appeals, 5th Circuit. Term No. 398. Lydia Hanszen MacMullen, J. A. MacMullen, H. Earl Barnes et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28,353.



TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

SCOTLAND TERR. 1922

No. 117

NAM W. MASTIN, LYDIA HANSEN MACMULLEN, EUGENE
HANSEN, ET AL., APPELLANTS,

THE UNITED STATES OF AMERICA,

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JULY 1, 1922.

(28,354)

(28,354)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 399.

SAM W. MASON, LYDIA HANSZEN MacMULLEN, EUGENE
HANSZEN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

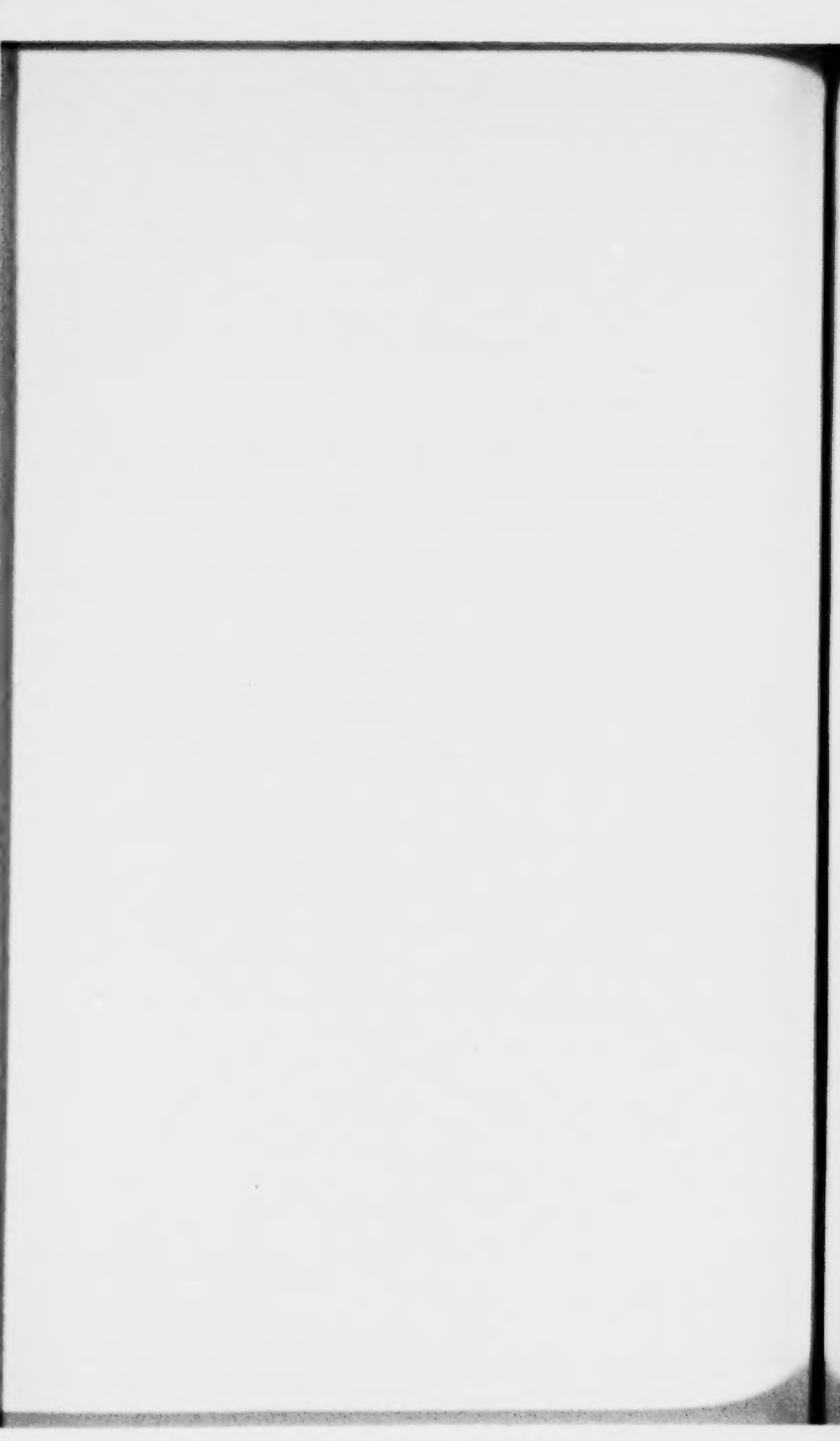
Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex C. King, Circuit Judges.

SAM W. MASON, LYDIA HANSZEN McMULLEN, J. A. McMULLEN, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Be it remembered, That heretofore, to wit, on the 25th day of May, A. D., 1920, a transcript of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3548, as follows:



UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

versus No. 1172, In Equity.

SAM W. MASON, ET AL.

TRANSCRIPT OF APPEAL

Taken by the Defendant, and Cross Appeal taken by the
Plaintiff to the United States Circuit Court of Ap-
peals, Fifth Circuit, New Orleans, Louisiana.

1 IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE WESTERN DISTRICT
 OF LOUISIANA, SHREVEPORT DIVI-
 SION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 1172, In Equity.

SAM W. MASON, MRS. LYDIA HANSZEN McMUL-
 LEN, J. A. McMULLEN, EUGENE HANSZEN, ROB-
 ERT L. STRINGFELLOW, DILLARD P. EUBANK,
 J. B. STOCKLEY, C. F. GRIGGS, ELIZABETH MA-
 SON, MARGARET MASON, JOHN B. MASON, W.
 C. MASON, A. A. MASON, A. D. MASON, GULF RE-
 FINING COMPANY OF LOUISIANA,

Defendants.

To the Honorable Judge of the District Court of the
 United States for the Western District of Louisiana,
 Sitting within and for the Shreveport Division:

The United States of America, by its Solicitor, Robert
 A. Hunter, Special Assistant to the Attorney General,
 acting herein under the direction and by the authority
 of the Attorney General of the United States, brings this
 bill of complaint against the following defendants:

Sam W. Mason, a citizen of Louisiana, and a resident
 of the City of Shreveport, in the Western District of said
 State, Shreveport Division;

Mrs. Lydia Hanszen McMullen, a citizen of the State
 of Nevada, and a resident of the town of Carson City,
 said State;

J. A. McMullen, husband of said Lydia Hanszen Mc-
 Mullen, a non-resident of the State of Louisiana, whose
 residence is unknown to plaintiff;

Eugene Hanszen, a citizen of Texas and a resident of the City of Dallas, in the Northern District of said State;

Robert L. Stringfellow, a citizen of Louisiana, and a resident of the City of Shreveport in the Western District of said State, Shreveport Division;

Dillard P. Eubank, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division;

J. B. Stockley, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

2 C. F. Griggs, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

Elizabeth Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of State, Shreveport Division;

Margaret Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division.

John B. Mason, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

W. C. Mason, a citizen of Louisiana, and a resident of Mooringsport, in the Western District of said State, Shreveport Division;

A. A. Mason, a citizen of Texas, and a resident of Petrolia, in the Northern District of said State;

A. D. Mason, a citizen of Louisiana, and a resident of the City of Shreveport, in the Western District of said State, Shreveport Division; and

Gulf Refining Company of Louisiana, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of New Orleans, Eastern District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which had theretofore been surveyed and was known as the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section Five (5), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other mineral therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25,

1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public lands in certain cases," ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas, or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well, known as Mason Mineral No. 1, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit: December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to
4 withdraw said land from location, entry and other appropriation.

V.

Plaintiff is informed and believes that the oil and gas withdrawn from the said tract of land, as above set forth, was extracted under the color of an illegal mineral location made by Sam W. Mason, defendant, and by W. W. Mason (since deceased) pretending to act under the placer mining laws of the United States, which pretended mineral location was recorded March 26, 1910, in Book 59, page 234, of the Conveyance Records of Caddo Parish, Louisiana. That said pretended mineral location embraced Twenty (20) acres in the said $8\frac{1}{2}$ of the $E\frac{1}{4}$ of said Section Five (5), in Township Twenty (20) North, Range Sixteen (16) West, and is in words and figures as follows:

Notice of Mining Location.

Sam W. Mason and W. W. Mason

to

The Public.

To all whom it may concern:

Notice is hereby given that the undersigned, all citizens of the United States, having complied with the requirements of Chapter VI, Title 32 of the Revised Statutes of the United States and the local laws, rules and regulations, and under the authority of the Act of Congress of February 11, 1897, relating to the location of lands containing petroleum oil and other mineral oils under placer mining claims; the undersigned, constituting a mining association have located 20 acres of land described as follows, lying in Caddo Parish, State of Louisiana, to-wit:

Beginning at a point 660 feet east of the south west corner of the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 5, Township 20, Range 16, thence east 1320 feet, thence south 660 feet, thence west 1320 feet, thence north 660 feet to the place of beginning containing 20 acres.

Witness our hands this the 26th day of March, A. D. 1910.

(Signed)

SAM W. MASON,
W. W. MASON.

Attest:

C. F. GRIGGS,
W. E. MARTIN.

Indorsed:—Filed and Recorded Mch. 26, 1910. F. A. Leonard, Clk & Ex Off Recorder. Recorded Con Book 59, page 234.

That the said Sam W. Mason and W. W. Mason themselves made no effort to explore said land or drill
 5 thereon for oil and gas, but on March 28, 1910, by act recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana, executed a mineral lease thereof to defendant, Gulf Refining Company of Louisiana.

Plaintiff avers that the said defendants have no right, title or interest in and to the said tract of land, but, acting under the said pretended and illegal mineral location and lease and not otherwise, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and defendant, Gulf Refining Company of Louisiana, drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it has appropriated to its own use.

That the said Gulf Refining Company of Louisiana, paid to the said Sam W. Mason, and to W. W. Mason and his heirs, to-wit: Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, and A. D. Mason, and to the other defendants herein named, who claimed an interest in such mineral location, certain sums as royalties, the amount of which is to be plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from said land, appropriated as aforesaid, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to plaintiff, full discovery from the said defendants is sought.

VI.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Fifty-seven Thousand (\$57,000.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

6

VIII.

In consideration whereof and for as much as the plaintiff is without full, adequate and complete remedy in the premises save in a Court of Equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That the aforesaid mineral location made on March 26th, 1910, by Sam W. Mason and W. W. Mason, as per act recorded in Conveyance Book 59, page 234, and the lease made by the said Sam W. Mason and W. W. Mason to the Gulf Refining Company of Louisiana, on March 28, 1910, by act recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of Subpoena issue directed to Sam W. Mason, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason and A. D. Mason, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

And may it further please the Court that an order be granted and entered, directed to the following defendants, not inhabitants of, or now within, this District, to-wit: Mrs. Lydia Hanszen McMullen, Eugene Hanszen, A. A. Mason, and the Gulf Refining Company of Louisiana, and served as provided by law, directing said defendants to appear and answer to this cause on a day certain to be designated by this Court.

And may it further please the Court that an order be granted and entered directed to J. A. McMullen, defendant, directing said defendant to appear and answer to this cause on a day certain to be designated by this Court, and that same be served by publication in such manner as the Court may direct, for not less than once a week for six consecutive weeks, as required by Section 57 of the Judicial Code.

Prays for all further orders necessary and such other and general relief as may by the Court be deemed just and equitable.

ROBERT A. HUNTER,

8

Special Assistant to the Attorney General.

5

AFFIDAVIT.

United States of America,
Northern District of California,

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location, and all forms of appropriation by order of December 15, 1908, and July 2, 1910, and that from the examination of such lands, and from examination of the records of the General Land Office and of the local land office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of com-

plaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

(Seal)

C. W. CALHEATT,
Deputy Clerk United States District Court, Northern District of California.

9

ORDER.

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the Court that Mrs. Lydia Hanszen McMullen, and her husband, J. A. McMullen, Eugene Hanszen, A. A. Mason, and the Gulf Refining Company of Louisiana, are not inhabitants of the Western District of Louisiana and are domiciled outside of said District,

It is therefore ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport in the Western District of Louisiana, on the 1st day of October, 1917, at the hour of ten o'clock A. M., and that service of duly certified copies of the said bill of complaint and of this Order be made on said defendants, other than J. A. McMullen, respectively, wherever found, and that service be made on the said J. A. McMullen by publication in the Shreveport Times for not less than once a week for a period of six consecutive weeks, as required by Section 57 of the Judicial Code, and that

copies of this Order, certified under seal, be made by the Clerk of this Court, and delivered to the Marshal for publication, and for return.

Thus done and signed this 8 day of Aug., 1917.

GEO. WHITFIELD JACK,
United States Judge.

Indorsed:—Bill of Complaint. Filed Aug. 8, 1917.

B.

10 In the District Court of the United States for the
Western District of Louisiana, Shreveport
Division.

United States of America, Plaintiff,

vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

The joint and several answer of all the defendants in the above entitled and numbered cause.

And now comes all of said defendants and answer the bill of complaint as follows:

I.

The ownership by the United States, on and before December 15th, 1908, of the South Half of the Northeast Quarter of Section Five (5), township and range referred

to, is admitted; but it is denied that plaintiff is now the owner thereof or entitled to the possession of said land or of the minerals therein contained.

II.

It is denied that the presidential withdrawal of December 15th, 1908, affected the right of any duly qualified citizen to locate said property under the mining laws of the United States or that such order pretended to operate said tract from location and purchase.

It is admitted that the withdrawal order of July 2nd, 1910, (issued under authority of the act of Congress approved June 25th, 1910) ratified and confirmed said order of December 15th, 1908, and withdrew thereafter all lands embraced within the terms of such last order from location. But, as aforesaid, it is denied that the first withdrawal order operated to prevent location of said

tract under the mining laws, and defendants show
11 that the last order specially excepted from its force and effect all tracts then possessed by bona fide occupants who had theretofore made discovery, or were then in diligent prosecution of work leading to a discovery of oil or gas, such rights being expressly saved from interference by executive order, by the provisions of said act of June 25th, 1910.

It is admitted that neither of said orders of withdrawal have ever been vacated; but it is denied that, since December 15th, 1908, the property involved herein has not been subject to exploration or location under the mineral laws of the United States.

III.

Defendants admit that they entered upon and took possession of said property for the purpose of drilling for

oil and gas and did drill the well referred to in the bill of complaint, from which well oil has been produced and sold, as hereinafter is fully set out. But defendants show that said well was drilled in good faith under a valid and legal mineral location and not in violation of any rights of plaintiff or contrary to its laws, or without any valid title, right or authority or in bad faith or to the injury of plaintiff.

IV.

The averments of Article Four of the Bill of Complaint are denied, and defendants show that prior to the withdrawal of July 2nd, 1910, all of defendants were in possession of the tract of land embraced in the mineral location hereinafter more specifically referred to, and which lies within the tract of land referred to in Article I of the bill, and that under said location, oil was in fact discovered by defendants in paying quantities long prior to said withdrawal order.

V.

Defendants admit that oil was withdrawn from said tract under the mineral location made by Sam W. Mason and W. W. Mason; but they deny that such location was a pretended one or was illegal. On the contrary, they aver that the location evidenced by the notice of location set out in this article of the bill of complaint was a legal and valid one, made pursuant to the provisions of the placer mining laws of the United States upon public lands then open to exploration, location and purchase under such mining laws.

Defendants admit the execution of lease by said locators to the Gulf Refining Company of Louisiana, as recorded in Conveyance Book 59, page 238, of the records of Caddo Parish, Louisiana; and show

that under said lease, lawfully made and entered into, said lessee proceeded in good faith and according to the terms of its said contract to drill upon said location, commencing such drilling on the 16th day of April, 1910, and completing such effort with the discovery of oil in paying quantities by the bringing in on the 6th day of June, 1910, of an oil well, thereby fully completing such location.

And defendants admit that there has been withdrawn from said land through said well, drilled as aforesaid under said mineral location, a large quantity of oil which, after delivery to the mineral locators of their proportion as royalty as provided in said lease, the Gulf Refining Company of Louisiana has sold and disposed of for its own account. The quantity and value of the oil so produced and the amount thereof appropriated to the use of the several defendants will be hereafter specifically set forth.

VI.

Defendants deny that they are unlawfully trespassing upon said land; but aver that being in possession under a valid mineral location completed by discovery prior to withdrawal and followed by the assessment work required by law thereafter, they are entitled to possession of said tract and to drill thereon as they may see fit; and that plaintiff has no interest therein.

VII.

Defendants deny that they or either of them acted in bad faith in the premises, but aver their good faith in all the acts and dealings aforesaid.

VIII.

And now defendants show that said land was not withdrawn from mineral location until July 2nd, 1910, prior

to which date (to-wit, on June 6th, 1910) said locators, Sam W. Mason and W. W. Mason, through their lessee, Gulf Refining Company of Louisiana, had made a discovery on said tract, of oil in paying quantities, under the location made by them on March 26th, 1910; all of which defendants allege to be true, and plead the same in bar to the bill, and pray the judgment of the Court whether they should further answer said bill, and upon hearing hereof, pray that said bill be dismissed and that they go hence with their costs in this behalf sustained.

13

IX.

In event they be required to answer further, then defendants would show that in its operations on said tract as lessee of said mineral locators, the Gulf Refining Company of Louisiana extracted therefrom up to the 31st day of July, 1917, ninety-two thousand five hundred and eighty-three & 27/100 (92583.27) barrels of oil of the market value of Sixty-four Thousand Nine Hundred and Seven & 77/100 (\$64,907.77) Dollars; of which, thirteen thousand and eighty-five & 22/100 (13085.22) barrels of oil of the market value of Eight Thousand and Sixty & 8/100 (\$8060.08) Dollars was delivered to said locators under the stipulations of said lease, and two thousand three hundred and forty-four & 99/100 (2344.99) barrels of oil of the market value of Two Thousand Seven Hundred and Sixty-three & 23/100 (\$2,763.23) Dollars is being held for account of said locators pending termination of litigation, and the remainder, to-wit, seventy-seven thousand one hundred and fifty-three & 6/100 (77153.06) barrels of oil of the market value of Fifty-four Thousand and Eighty-four & 46/100 (\$54,084.46) Dollars, retained by said lessee for its own use as owner—all of which it had the right to do.

X.

Defendants show that before making the location aforesaid, said mineral locators consulted reputable and reliable counsel, members of the bar of this Court, as to their right to locate said land under the placer mining laws, and that they were advised that the withdrawal order of December 15th, 1908, did not withdraw said lands from location under the mining laws of the United States, and that, if such withdrawal order should be construed to be a withdrawal of such land from mineral location, the order was utterly null and void as beyond executive authority and in violation of the statutes of the United States relative to placer mining locations and in violation of the provisions of the Constitution of the United States vesting in the President executive authority only. And in reliance upon such advice, said location was made.

And defendant, Gulf Refining Company of Louisiana, likewise, before entering into said contract of lease, consulted a number of reputable counsel and was likewise informed and advised by all of said attorneys that the mineral location of Sam W. Mason and W. W. Mason was validly made upon land subject to location under the placer mining laws of the United States, and relying upon the advice of counsel so given, entered into said lease and drilled the well above referred to.

14 And defendants specially plead that all their acts and conduct in the premises were in absolute good faith and in the belief that they were exercising their lawful rights and in reliance on the advice of reliable and competent counsel that said location was validly made upon land subject under the mining laws of the United States to placer mining location.

XL

And now defendants show that the Gulf Refining Company of Louisiana took possession of said land in good faith under a lease from one whom it believed and had the right to believe lawfully entitled to possession thereof and to the minerals therein contained, with the full and exclusive right to drill upon and operate said property for the production of oil, gas and other minerals therefrom, and that said well was drilled in good faith and under such belief of right. And defendant, Gulf Refining Company of Louisiana, shows that in the event the Court should hold that plaintiff is the owner of said land, that this defendant is entitled to be reimbursed the entire cost of drilling, equipping and operating said well before it can be held liable, if any such liability there be, for any oil extracted therefrom. And defendants show that the actual cost of drilling and equipping of said well was Ten Thousand One Hundred and Nineteen & 86/100 Dollars (\$10,119.86) and that the cost to defendant of the operation of said well to the 31st day of July, 1917, was Twenty-three Thousand and Seventeen & 79/100 (\$23,017.79) Dollars, making a total expense to this defendant in the drilling, equipping and operation of said well of Thirty-three Thousand One Hundred and Thirty-seven & 65/100 (\$33,137.65) Dollars.

Wherefore, having made full and complete answer to all the allegation of the aforesaid bill of complaint, defendants pray that the said bill be dismissed with all costs in this behalf sustained.

In the alternative, that is in the event plaintiff should be adjudged the owner of said property and entitled to an accounting for the oil extracted therefrom, then defendants pray that said Gulf Refining Company of Louisiana

may be adjudged not liable to the plaintiff on such account until said plaintiff have first repaid and reimbursed defendant the entire cost of drilling and equipping said well and of the operation thereof up to date of

15 final settlement; and that, if this relief be refused, then that all such expenditures and outlays by said defendant in the production of such oil be held and adjudged by this Court to be offsets on said account in favor of said Gulf Refining Company of Louisiana and against plaintiff.

And defendants pray for all orders and decrees necessary or proper in the premises and for general relief.

D. EDWARD GREER,
THIGPEN & HEROLD,

Solicitors for Defendants.

Indorsed:—Answer. Filed Sep. 29, 1917.

16 In the District Court of the United States, for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

I.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled

cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and for reply to the set off and counterclaim asserted by defendants in their answer filed in the above numbered and entitled cause, shows:

II.

That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

III.

Plaintiff denies all the allegations of the said answer relating to said set off and counterclaim, and, particularly, paragraph II, and the prayer of said answer.

IV.

Plaintiff shows that the said defendants are not entitled to any set off or counterclaim, whatsoever in the premises.

V.

Further replying, plaintiff avers that the said defendants entered upon the land described in the bill
17 of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

VI.

Plaintiff further shows, in the alternative, that even if the said defendants are entitled to a set off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

VII.

Wherefore, plaintiff prays that the set off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed:—Plaintiff's Reply to Defendants' Set Off and Counterclaim. Filed Oct. 5, 1917.
B.

18 (INTERROGATORIES PROPOUNDED BY
PLAINTIFF TO THE GULF REFINING
COMPANY OF LOUISIANA).

(1).

In your answer to the bill of complaint herein, it is stated that the Gulf Refining Company of Louisiana drilled the well known as Mason Mineral No. 1. State when said well was commenced and when completed.

(2).

In your answer it is further stated that the production to July 31, 1917, of oil from the land in controversy, was 92,583.27 barrels, of the value of \$64,907.77. State whether or not the production of said well as given in your said answer is exact, or estimative.

(3).

State the total production of oil from the said well, (a) up to July 31, 1917, and (b) from July 31, 1917 to January 1, 1918.

19

(4).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(5).

Was a separate and complete record kept by the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(6).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative, and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(7).

Give the names and addresses of the person, or persons, who furnished the data or information set forth in your answer to the bill of complaint herein relative to the production of the well in suit.

(8).

State the total market value of the oil produced by the Gulf Refining Company of Louisiana from the land in controversy and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(9).

State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said well was drilled and operated, in the manufacture and sale, as well as the production of oil, and also state whether the oil produced by it, from the land in controversy, was sold to other persons, or corporations, or was manufactured by it into products of oil.

20

(10).

What are the principal products manufactured from petroleum or crude oil?

(11).

State the total value, either exactly if you know, or approximately if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana, from the oil extracted from the land in controversy.

(12).

State the total profits made by the Gulf Refining Company of Louisiana (a) from the sale of any or all of the crude oil extracted from the land in controversy, and, (b)

the profits made by it from the manufacture and sale of the products of said crude oil.

(13).

If any of the crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to any other company or person, state where and in what manner delivery thereof was made.

(14).

If in the answer to the foregoing interrogatories, it is stated that the Gulf Refining Company of Louisiana, did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold (b) what profit the Gulf Refining Company of Louisiana made on the sale thereof (c) how delivery was made to the purchaser (d) what relation if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

21

(15).

How much money was paid as royalties by the Gulf Refining Company of Louisiana to the other defendants herein, out of the proceeds of the sale of oil taken from the land in controversy, and state the amount of such

royalties which the said Gulf Refining Company of Louisiana is now holding, pending the result of this suit, and the names of the persons for whose account said royalties are held.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Interrogatories to be Answered by the Gulf Refining Company of Louisiana. Filed Feb. 14, 1918.

22 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Complainant,
vs. No. 1172, In Equity.
Sam W. Mason, et al., Defendants.

In the above numbered and entitled cause, now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice-president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to-wit:

To Interrogatory No. 1, defendant answers:

Mason Mineral No. 1 was commenced on April 16th, 1910. The well was completed in the last week of May, 1910, and was completely equipped on June 6th, 1910.

To Interrogatory No. 2, defendant answers:

The figures as to the number of barrels and the value of the oil taken from the land in controversy, to July 31st, 1917, are exact.

To Interrogatory No. 3, defendant answers:

(a) The total production from the said well to July 31st, 1917, was 92,583.27 barrels, of the value of \$64,907.77. (b) The production from July 31st, 1917, to January 1st, 1918, was 1,421.16 barrels, of the value of \$2,825.17.

To Interrogatory No. 4, defendant answers:

The well was operated by itself.

To Interrogatory No. 5, defendant answers:

Yes, a record was kept of daily production of the oil from said well.

To Interrogatory No. 6, defendant answers:

The production as given above is exact.

To Interrogatory No. 7, defendant answers:

L. E. Delcuse, Auditor of the Gulf Refining Company of Louisiana, Gulf Pipe Line Company Building, Houston, Texas.

To Interrogatory No. 8, defendant answers:

The production from said land up to January 1st, 1918, was 94,004.43 barrels, of the value of \$67,732.94. The value given is based on posted pipe line prices at the date of the purchase of the oil, same being at prevailing price of oil in the field at such date.

To Interrogatory No. 9, defendant answers:

The Gulf Refining Company of Louisiana is not now, nor was it at the time the well was drilled and operated, engaged in the manufacture of products of oil. The crude oil produced by it from the land in controversy was sold to the Gulf Pipe Line Company.

To Interrogatory No. 10, defendant answers:
Gasoline, kerosene and lubricating oils.

To Interrogatory No. 11, defendant answers:

The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 12, defendant answers:

(a) The Gulf Refining Company of Louisiana made no profits from the sale of any or all of the crude oil extracted from the land in controversy, outside of the profit made by it in its drilling operations—the value of the oil at the mouth of the well, less the cost of drilling, equipment and operation.

(b) The Gulf Refining Company of Louisiana never at any time manufactured any product from the oil extracted from the land in controversy.

To Interrogatory No. 13, defendant answers:

The crude oil extracted from the land in suit by the Gulf Refining Company of Louisiana was sold to the Gulf Pipe Line Company, a corporation organized and existing under the laws of the State of Texas; delivery thereof being made from the pipe lines of the Gulf Refining Company of Louisiana to the pipe lines of the Gulf Pipe Line Company, at the receiving station of the latter company in the State of Texas.

24 To Interrogatory No. 14, defendant answers:

(a) As aforesaid, the oil from the lands in controversy was sold to the Gulf Pipe Line Company:

(b) From this sale the Gulf Refining Company of Louisiana made no profit beyond its profit from pipe line operations, having charged the Gulf Pipe Line Company, in addition to the value of the oil in the field,

Pipage on 20,649.94 bbls. at 5c. per bbl. or	\$1,032.47
Pipage on 73,354.99 bbls. at 10c. per bbl. or	7,335.50
Total pipage charge of	<u>8,367.97</u>

This pipage charge represents little, if any, profit, but is the cost of the operation of the line plus a reasonable depreciation and depletion charge to take care of the operation and obsolescence of the pipe line.

(c) Delivery, as aforesaid, was made to the purchaser at its receiving station in the State of Texas.

(d) The Gulf Refining Company of Louisiana and the Gulf Pipe Line Company are not composed entirely of the same stockholders, nor are they managed by the same directors, or officers. The majority of the shares of stock of the Gulf Refining Company of Louisiana are, however, owned by the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, which corporation also owns the majority of the shares of stock of the Gulf Pipe Line Company.

(e) If the Gulf Pipe Line Company made any profits out of said oil, the Gulf Refining Company of Louisiana participated in none of same. Of course, if the Gulf Pipe Line Company made any profits from the oil (of which defendant has no knowledge) the stockholders common to both corporations received some benefit from such profit.

To Interrogatory No. 15, defendant answers:

There were delivered by the Gulf Refining Company of Louisiana, as royalty, to the other defendants herein, 13,085.22 barrels of oil, out of the production from the property in controversy, which oil it purchased from the said

defendants, for \$8,060.08, at the prevailing market price in the field at the date of such purchase.

25 The Gulf Refining Company of Louisiana is now holding, pending the result of this suit, \$3,234.12, which stands on its books, subject to the credit of its co-defendants as representing the purchase price of 2,581.86 barrels of oil, delivered to the said co-defendants as royalty, and purchased by it at the prevailing prices in the field.

The number of barrels of oil delivered to each of its said co-defendants and the purchase price thereof is as follows:

Paid For.

	Bbls.	Value.
R. L. Stringfellow and J. B. Stockley	396.63	158.65
Mrs. Lydia H. McMullen	6,718.32	3,304.03
E. Hanszen	619.11	548.17
D. P. Eubank	1,238.26	1,096.51
Sam W. Mason	1,238.26	1,096.51
R. L. Stringfellow	1,916.45	1,237.48
J. B. Stockley	958.19	618.73
	<hr/> 13,085.22	<hr/> 8,060.08

Held up on Account Litigation.

Mrs. Lydia H. McMullen, Trustee ..	322.75	404.27
E. Hanszen	322.75	404.27
D. P. Eubank	645.45	808.49
Sam W. Mason	645.45	808.49
R. L. Stringfellow	430.30	539.06
J. B. Stockley	215.16	269.54
	<hr/> 2,581.86	<hr/> 3,234.12

C. R. MINOR.

Sworn to and subscribed before me, on this the 15th day of March, 1918.

(Seal) J. A. THIGPEN,
Notary Public in and for
Caddo Parish, Louisiana.

Indorsed:—Answer of Gulf Refining Company of Louisiana to Interrogatories. Filed Apr. 20, 1918.
B.

26 United States District Court, Western District
of Louisiana.

United States of America,

vs. No. 1172, In Equity.

Sam W. Mason, et als.

Note of the Evidence offered and filed by plaintiff and defendant, at the hearing of Special Pleas set forth in Answer of defendants in above cause, in said Court, at Shreveport, Louisiana, on February 28, 1918, before his Honor, Judge Rufus E. Foster.

Appearances:

Robert A. Hunter, Esq., Special Assistant to the Atty. General, Solicitor for Complainant.

Thigpen & Herold, Solicitors for Defendants.

Counsel for defendants offers and files in evidence transcript of the testimony of Sam W. Mason on the trial of Special Pleas set forth in Answer of Defendants.

Offerings by Complainant.

By Mr. Hunter:

1. I wish to offer in evidence Withdrawal Order of December 15, 1908, and July 2, 1910, marked "Plaintiff's Exhibits A and B," respectively.

2. I wish to offer in evidence copy of telegram (Certified copy of telegram) from the Commissioner of the General Land Office to the Register and Receiver, Natchitoches, La., dated December 18, 1908.

By Mr. Herold:

Objected to on the ground that it is beyond the province of the Commissioner of the Land Office to change or alter the terms of the withdrawal Order.

Objection is overruled.

Document filed in evidence and marked "Plaintiff's C."

By Mr. Hunter:

I offer in evidence certified copy of letter, dated December 15, 1908, from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed and marked Plaintiff's "D."

4. I wish to offer in evidence certified copy of letter dated July 16, 1910, from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed and marked "Plaintiff's Exhibit E."

5. Plaintiff offers in evidence certified copies of letters marked "Plaintiff's F," 1, 2, 3, 4 and 5. Documents filed in evidence.

6. Plaintiff offers in evidence copies of letters and documents marked Plaintiff's "G, H, I, J and K". Documents filed in evidence as marked.

7. Plaintiff offers in evidence certified copy of Plat showing petroleum withdrawals, marked Plaintiff's "L". Filed.

8. Plaintiff offers in evidence certified copy of Decision of the Department of the Interior, in the matter of the Homestead Entry of John T. Bowman, document filed and marked "Plaintiff's M."

9. Plaintiff also offers in evidence Decision of the Commissioner of the General Land Office in the matter of the Homestead Entry of John Bowman, marked Plaintiff's "N."

10. Plaintiff also offers certified copies of Decisions of the Commissioner of the General Land Office and of the Secretary of the Interior, in the matter of the Homestead Entry of William J. Alborty. Document filed in evidence and marked Plaintiff's "O and Plaintiff's P."

11. Plaintiff also offers in evidence Map showing petroleum withdrawals outstanding on September 30, 1916, in the State of Louisiana. Document filed in evidence and marked "Plaintiff's Q."

12. Plaintiff also offers in evidence extract copy of the Tract books of the General Land Office, so far as it shows Section 5, Township 20, North, Range 16 West. Document filed in evidence and marked "Plaintiff's R."

13. Counsel for plaintiff also offers in evidence copy of letter of December 15, 1908, from the Commissioner

of the General Land Office to the Register and Receiver at Natchitoches, Louisiana. Document filed in evidence and marked "Plaintiff's S."

14. Plaintiff also offers in evidence Telegram from the Commissioner of the General Land Office to the Register and Receiver, at Natchitoches, Louisiana. Document filed and marked "Plaintiff's T."

Evidence Closed.

I hereby certify that the above and foregoing is a full, true and correct note of the evidence offered at the hearing of above cause on Special Pleas of Defendants, at Shreveport, La., before Honorable Rufus E. Foster, U. S. Judge, on February 28, 1918.

Shreveport, La., Feb. 28, 1918.

.....,
Stenographer.

TESTIMONY OF SAM W. MASON ON TRIAL OF
SPECIAL PLEAS SET FORTH IN ANSWER OF
DEFENDANTS.

28 In the District Court of the United States, for
the Western District of Louisiana.

United States of America, Complainant,

vs.

Sam W. Mason, et al., Defendants.

Appearances:

For Defendants, Thigpen & Herold.

For Plaintiff, Robert A. Hunter, Special Assistant to
the Attorney General.

Testimony taken on behalf of Defendants.

SAM W. MASON, called as a witness for Defendants,
being first duly sworn, testified as follows, on direct ex-
amination by Mr. Herold:

Q. Mr. Mason, you are one of the defendants in this
case?

A. Yes, sir.

Q. You are the Sam W. Mason, who was one of the
Mineral locators on the property in controversy, on March
26, 1910?

A. Yes, sir.

Q. Was any discovery of oil in paying quantities made
under that location?

A. There was.

Q. When was work begun on the location in the effort
to find oil?

A. Drilling operations started according to my recollection, on April 16, 1910. The derrick was probably erected a few days earlier.

Q. Was this well completed?

A. It was.

Q. On what date?

A. May 29, 1910.

Q. What was the result of this well, that is to say, did it produce oil, and, if so, in approximately what quantities?

A. This well produced oil in paying quantities, and during the first month it averaged approximately 290 to 300 barrels a day.

Q. Is the well still producing?

A. It is.

29

Cross Examination.

By Mr. Hunter:

Q. How many wells were drilled on the claim?

A. Only one, known as Mason Mineral No. 1.

Q. Do you know of your own knowledge when this well was commenced?

A. I do. I was up on the claim about ten days after the location was made, and at that time the material was being put on the ground for the beginning of operations for the drilling of the well. I kept in close touch with the drilling operations during the months of April and May, and have a record in my office showing that the oil sand was reached on May 29, 1910.

Q. Did you visit the tract and see the derrick after it was built, or witness any of the drilling operations?

A. I was on the tract while they were rigging up to drill, that is, after the derrick was completed, and while the machinery was being placed. I was not on the tract again until a few days after the completion of the well.

Q. When did you say the well was completed?

A. The well was completed, according to my records, on May 29, 1910, that is to say that the oil sand was reached and the actual process of drilling completed.

Q. When was oil from this well run into the pipe line?

A. There was a small amount of oil run during the month of May, 1910. The reason I know this, is because we paid the royalty on a small amount of oil, for oil run during the month of May.

Q. In testifying relative to the time of beginning and completion of this well, are you testifying of your own personal knowledge, or from records in your office, or in the possession of the Gulf Refining Company?

A. On the matter of the dates of location of the claim, and as to the date of the completion of the well and as to the payment of royalty, I am testifying from personal records kept by me with reference to the matters. As to the amount of oil produced, I am testifying from the records in the possession of the Gulf Refining Company of Louisiana.

30

Q. This location was not made until March 26, 1910?

A. That is the date.

Q. Was any work whatever of any kind, nature, or description done on this claim, prior to March 26, 1910?

A. There was not.

Indorsed:—Testimony of Sam W. Mason on Trial of Special Pleas Set Forth in Answer of Defendants. Filed Feb. 28, 1918.

31

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Thursday, Shreveport, La., February 28, 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Rufus E. Foster, U. S. Judge.

United States of America,

vs. No. 1172, In Equity.

Sam W. Mason, et als.

This cause came on this day to be heard, according to previous assignment, upon the Special Pleas set up in defendants Answer herein—Mr. Robert A. Hunter, Special Assistant to the Attorney General, appearing as Solicitor for the Complainant, and Mr. S. L. Herold appearing as Solicitor for defendants. The trial of the case was regularly proceeded with, documentary evidence was offered and filed by both complainant and defendant and the matter was argued and submitted.

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

Saturday, Shreveport, La., March 2, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon Rufus E. Foster, U. S. Judge.

United States of America,

vs.

No. 1172, In Equity.

Sam W. Mason, et als.

In this cause, in which the Pleas filed by defendants had heretofore been argued, and submitted, counsel for either side being now present in open Court, decision is orally rendered by the Court, overruling said Pleas, with the right reserved to defendants to renew said pleas upon the trial of the cause upon its merits.

32 United States District Court, Western District of Louisiana.

United States,

vs.

No. 1172, In Equity.

Sam W. Mason, et al.

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court

and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law thereon.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court, or elsewhere as may be advisable.

RUFUS E. FOSTER, Judge.

March 29, 1918.

Filed Mar. 29, 1918.

33 United States District Court, Western District
of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1154

W. W. Green, et al.

United States District Court, Western District of Louisiana, at Shreveport, Louisiana.

United States,

vs.

No. 1156

Henry Hunsicker, et al.

United States District Court, Western District of Louisiana,
at Shreveport, Louisiana.

United States,
vs. No. 1159
Arkansas Natural Gas Co., et al.

United States District Court, Western District of Louisiana,
at Shreveport, Louisiana.

United States,
vs. No. 1168
W. H. Matthews, et al.

United States District Court, Western District of Louisiana,
at Shreveport, Louisiana.

United States,
vs. No. 1170
D. P. Eubanks, et al.

United States District Court, Western District of Louisiana,
at Shreveport, Louisiana.

United States,
vs. No. 1171
Mrs. Lydia Hanszen McMullen, et al.

United States District Court, Western District of Louisiana,
at Shreveport, Louisiana.

United States,
vs. No. 1172
Sam W. Mason, et al.

Evidence taken before the Honorable E. H. Randolph,
Special Master, in the above causes, same being consoli-

dated, commencing of June 10th, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

34 Appearances:

R A. Hunter, for the Plaintiff.

Thigpen & Herold, J. Hampton Story and J. C. Pugh & Son, for defendants.

It is agreed that all of the documentary evidence offered by Plaintiff and Defendants in the case of the United States vs. Sam W. Mason, et al., No. 1172 on the docket of this Court shall be considered as a part of the record in each of these consolidated case and it shall not be necessary for any of the parties herein to reoffer such testimony.

Counsel for Plaintiff makes the following offerings in the cases of the United States vs. W. W. Green, No. 1154; United States vs. W. H. Matthews, et al., No. 1168; United States vs. Mrs. Lydia Hanszen McMullen, et al., No. 1171. Extract copies of the Louisiana tract book, showing as far as it shows, sections three and four of Township Twenty North, Range Sixteen West, Louisiana meridian.

Filed and marked Plaintiff "A."

Extract from the Louisiana tract book showing, as far as it shows, section Ten, Township Twenty North of Range Sixteen West, Louisiana meridian.

Filed and marked exhibit "B."

Extract of the Louisiana tract book, showing as far as it does Sections Three and Four, Township Twenty North, Range Sixteen West, Louisiana meridian.

Filed in Evidence and marked exhibit "C."

Extract, or certified copy of letter dated September 27th, 1913, from the Commissioner of the General Land Office, to Mr. Arthur D. Kidder, Supervisor of surveys.

Filed and marked exhibit "D."

35 Certified copy of letter dated December 1st, 1916, from the Commissioner of the General Land Office to Mr. Arthur D. Kidder, Supervisor of surveys.

Filed and marked Plaintiff "E."

Counsel for Plaintiff offers in Evidence certified copy of plat of survey made by Arthur D. Kidder, Supervisor of Surveys, approved by the Commissioner of the General Land Office March 28th, 1917, showing Township Twenty, North of Range Sixteen West, Louisiana meridian.

Filed in evidence and marked exhibit "F."

With reference to the case of the United States vs. Mrs. Lydia Hanszen McMullen, et al., Counsel for Plaintiff, in addition to the evidence offered, offers a copy of Transcript of Appeal in the case of the Producers Oil Company vs. Mrs. Lydia Hanszen McMullen, et al., previously introduced in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, it being agreed said transcript may be used as far as applicable in this case.

In each of the consolidated cases now on trial, Counsel for Plaintiff offers in evidence the interrogatories pro-

pounded to the various defendants herein, and the answers of said defendants to said interrogatories. Said interrogatories and answers thereto being now on file.

JAMES W. NEAL, a witness for the Plaintiff being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, are you a special Agent of the General Land Office?

A. I am.

Q. State whether or not you made an investigation in the case of the United States vs. W. W. Green, et al., No. 1154, relative to the quantity and value of the oil taken from the land in controversy in that case?

A. I made the investigation.

Q. How was the investigation made?

35 A. The investigation was made by checking the books of the Company as to the amount of oil and value of the oil and division of the oil and values, as between the royalty claimants and the producing Companies.

Q. What records did you use in making that investigation?

A. I used the books of the Company, the records of the Company and the run tickets and the list price of oil on the dates that the runs were taken.

Q. What Companies records did you examine?

A. I examined the records of the Standard Oil Company of Louisiana.

Q. Did you make an examination later of the records of the Pure Oil Operating Company, in that case?

A. Yes, sir.

Q. What did you find from your examination with respect to the quantity of oil taken from this land?

A. I found that from May, 1912, to August, 1914, inclusive, there was run from the land 12,584.22 barrels of oil of the value of \$11,042.51.

Q. What is the name of the well from which that oil was taken?

A. Green No. 1.

Q. From your investigation, do you know who drilled that well?

A. Yes, sir, the Humphrey Oil and Gas Company drilled the well.

Q. Were you advised as to whether or not the Humphrey Oil and Gas Company was still in existence, as a corporation?

A. I am not.

Q. Do you know from your investigation, how much oil was taken from the land by the Humphrey Oil and Gas Company?

A. I have the division of the oil as made by the Standard Oil Company of Louisiana, which Company ran all of the oil from the well in this suit. Their records showed that the Humphrey Oil and Gas Company received 6,551.11 barrels of the value of \$5,199.58; that the Franklin Oil and Fuel Company received 786.40 barrels of oil of the value of \$690.03; The Pure Oil Operating Company received 2,979.05 barrels of oil of the value of \$2,986.95; H. L. Heilperin received 740.57 barrels of oil of the value of \$737.90; E. G. Palmer received 740.61 barrels of oil of the value of \$737.95; that W. W. Green received 786.48 barrels of oil of the value of \$690.10.

36 Q. Do your records show how much oil the Pure Oil Operating Company received out of the production?

A. Yes, sir.

Q. Have you read that out?

A. Yes, sir.

Q. What do your records show with reference to whom the total production was sold?

A. Sold to the Standard Oil Company of Louisiana.

Q. When was the well in controversy in case No. 1154 drilled?

A. The records show that Green No. 1, was begun February 24th, 1912.

Q. Mr. Neal, have you in your hand a statement showing the production and value of the oil involved in this suit?

A. I have.

Q. I mark this statement Plaintiff "G" and will ask you to state whether or not this statement, insofar as it relates to the quantity and value of the oil taken from the land is correct.

A. It is correct.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, this well Green No. 1 was drilled by the Humphrey Oil and Gas Company?

A. Yes, sir.

Q. Do you know how the Franklin Oil and Fuel Company became interested in the well?

A. No, sir, I do not. The records only show that they drew part of the oil and were paid for that oil by the Standard Oil Company of Louisiana.

Q. Do you know from your investigation when the other defendants that is the Pure Oil Operating Company, Heilperin, Palmer became interested in the subject matter of this suit.

A. I never took any note of those dates, as to the time they became interested.

Q. You have investigated sufficiently to know that neither the Pure Oil Operating Company or H. L. Heilperin or E. G. Palmer had anything to do with the original drilling of the well, but acquired an interest subsequently?

A. That is my impression, but I am not positive about that.

Q. Have you made an investigation as to the expenditure made by the Pure Oil Operating Company, and Heilperin and Palmer in operating the well?

A. I made an investigation of the cost of operating the well from January, 1913, to August, 1914, inclusive, by the Pure Oil Operating Company.

Q. Are you satisfied with the result of that investigation, as to its correctness?

A. Yes, sir.

Q. What was the cost of operating?

A. The cost was \$3,997.03.

Q. That was the cost of operating the Green Well No. 1 by the Pure Oil Operating Company?

A. Yes, sir.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "G" and identified by the witness, insofar as said statement relates to the production, value and division of the oil taken from the well in controversy, but not with reference to the counterclaim shown thereon.

Filed in Evidence and marked Plaintiff "G."

Counsel for Defendants, in connection with the cross examination of this witness offers the statement "G" insofar as it relates to the counterclaim.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, referring to the case of the United States vs. Henry Hunsicker, No. 1156, being one of the consolidated cases now on trial I will ask you to state whether or not you made an examination of the records of the Producers Oil Company with respect to the quantity and value of oil taken from the land in controversy in that case, if so, state the result of your investigation?

A. I made an investigation and found that the total oil produced by Well No. 2, Hunsicker Well No. 2, was 76,565.87 barrels of the value of \$55,776.89; the royalty as approximated from the oil run from the well 38 to Henry Hunsicker and C. J. Green, Jr., which has been paid in part and held in part by the Texas Company is \$9,294.46. The approximated amount retained by the Producers Oil Company, as their interest in the well, is of the value of \$46,482.41.

Q. Have you a statement showing the production and value of the oil involved in this suit?

A. Yes, sir.

Q. I hand you statement marked Plaintiff "H" and I will ask you to state whether or not you made this statement showing the production and value of the oil taken from the land in suit, and if that statement is correct?

A. The statement shows the production and value of the oil as I found it from the records of the Producers Oil Company.

Counsel for Plaintiff offers in Evidence the statement identified by the witness, insofar as it relates to the production and value of the oil taken from the land in suit, but not with reference to the counterclaim shown thereon.

Filed in Evidence and marked exhibit "H."

On Cross Examination he said:

By Mr. Storey:

Q. Did you examine the books and ascertain what it cost to drill well No. 1?

A. Yes, sir.

Q. And also well No. 2?

A. I did.

Q. What did you find to be the cost of drilling Well No. 2?

A. It shows the cost of drilling Hunsicker Well No. 2 to be \$8066.97.

Q. What did it cost to operate it?

A. The cost of operating the well to January 1st, 1918, was \$16,347.46.

Q. I see in this statement the cost of drilling well No. 1 is \$17,488.07, that is the well we are making no claim for, so strike that out of the statement.

(Witness strikes same out).

Counsel for defendants offers the statement referred to as cost of drilling and operating, in evidence.

39 On Re-direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, referring further to the statement marked Exhibit "H" in the Hunsicker case, I will ask you to state what is the difference in the account between the total production and the counter claim?

A. The difference between the total value of the oil produced from the well and the counterclaim is \$31,362.66.

Q. How do you arrive at the figures that you have just read, showing the total difference between the counter claim and the production?

A. The total production or the value of the total production from the well in suit was \$55,776.87 and the total cost of drilling and operating Well No. 2 was \$24,414.43, and taking that from the value of the production leaves the difference of \$31,362.46.

Q. What do the records show with reference to who received the total production of the oil?

A. The Texas Company ran the oil, run the oil from the land in question and divided the oil as between the parties interested.

Q. What Company produced all of the oil from the land, the Producers Oil Company?

A. Yes, sir, the Producers Oil Company.

Q. The Producers Oil Company made delivery to the Texas Company by putting the oil in the tanks on the land in controversy?

A. Yes, sir.

Q. The Texas Company removed the oil from these tanks by running it into their pipe line?

A. The Texas Company connected its pipe line with the tanks on the land and run the oil from those tanks.

Q. Mr. Neal, was all of the oil, about which you have testified, produced by Well Number Two?

A. All of the oil which I have testified to, was produced from Well No. 2, as shown by the run tickets. Well No. 2 was run into a tank by itself, and for a while wells Nos. 2 and 3 were operated together, and during that time it was estimated.

Q. Did you assist in making the estimate of the production of Well Number Two, while it was operated in connection with other wells?

A. Yes, sir.

40 Q. You are satisfied of the correctness of the estimate that has been made?

A. I am satisfied with the estimate.

Q. Do your records show when Well No. 2 was drilled?

A. No, I have that date in the office. I have examined the records of the Producers Oil Company as to the date of the drilling of the wells on this claim and I find that Hunsicker No. 2 was begun on March 19th, 1911.

Q. The derrick was built March 19th, 1911?

A. Yes, sir, the drilling of the well was begun April 1st, 1911.

Q. Well Number one did not produce any oil, according to your investigation?

A. Well Number one did not produce oil.

Q. Now, referring to case No. 1159, United States vs. Arkansas Natural Gas Company, state whether or not you made an examination of the records of the Arkansas Natural Gas Company, and what you found in reference to the production and value of gas, on the land in suit?

A. I made an investigation of the records of the Arkansas Natural Gas Company at Little Rock, Arkansas and found that from July 1st, 1911, when the well known as Hanszen No. one was turned into the pipe line, to September 30th, 1912, when that well ceased to produce, there was sold by the Arkansas Natural Gas Company 4,744,853,000 cubic feet of gas. The records of the Company show that the Company purchased from other wells, which gas was measured into the Company's pipe line 2,395,933,000 cubic feet of gas. Deducting the amount purchased by the Company from the total amount sold by the Company there was left 2,348,845,000 cubic feet of gas, which gas was produced by five wells owned by the Arkansas Natural Gas Company, and taking one-fifth of the total production of the five wells, as the amount produced by

the well in suit, I find that 469,769,000 cubic feet of gas was produced by the well known as Hanszen No. 1. I find from the records of the Company, that the Company paid $1\frac{1}{2}$ cents per thousand cubic feet at the mouth of the well, in this gas field, so that the value of the gas produced from this well was \$7,046.54.

I also found that the Company paid royalty or rental for the use of the land, right to drill and operate the well from May, 1910, to May, 1916, \$1400.00, which was paid by the Company to the royalty owners, and divided as follows:

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Warren H. Matthews $\frac{1}{8}$	\$175.00
Mrs. Lydia Hanszen McMullen $\frac{1}{2}$ of remainder	612.50
Dillard P. Eubanks $\frac{1}{2}$ of remainder ..	306.25
Sam W. Mason, remainder	306.25

Q. Mr. Neal, state whether or not the estimate about which you have testified, is in your opinion a correct estimate of the quantity and value of the gas produced by the well in suit?

A. The estimate is as near correct as a statement can be made at this time.

Q. Do you find a separate record taken of the production of this well?

A. No special record was kept, no separate record was kept.

Q. State whether or not any representative or employee of the Arkansas Natural Gas Company co-operated with you in the making of the statement about which you have testified, if so who was it?

A. Mr. E. J. Cowles, who is in charge of the operations of the Arkansas Natural Gas Company assisted me in making the statement that I have testified to.

Q. You and Mr. Coweles agreed upon the statement?

A. Mr. Cowles and I agreed upon the statement.

Q. I hand you statement marked Plaintiff "I" and referring to that portion of the statement that shows the quantity and value of gas and the royalties and I will ask you to state whether the same is a correct statement.

A. The statement is correct.

Counsel for Plaintiff offered in Evidence the statement marked Plaintiff "I" and identified by the witness insofar as it relates to the quantity and value of the gas taken from the land in controversy, and division of the royalty.

Filed in Evidence and marked exhibit "I."

Q. Does it likewise show when the well was begun?

A. Yes, sir.

Q. What was that date?

A. July 16th, 1910.

Q. How did you obtain that date?

42 A. From the records of the Company.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, in your examination of this particular case, did you make any inquiry as to when the gas was turned into the line from this well?

A. The records of the Company showed that the gas was turned into the line July 1st, 1911.

Q. And was run into the line for how long?

A. Until September 30th, 1912.

Q. Was any guage kept of this well?

A. No separate guage was kept of the well.

Q. Your idea then in arriving at an estimate of the amount of gas from this well is by taking the total amount

of gas sold by the Arkansas Natural Gas Company, between those dates and subtracting from that amount of gas purchased by the Company then divide the remainder, by the number of wells embraced in the operation of the Natural Gas Company?

A. That is correct.

Q. You have no data, of a separate guage of this well?

A. No, sir.

Q. Your idea then is merely to divide the amount of gas produced by the Arkansas Natural Gas Company, by five as that was the number of wells owned by the Company?

A. Yes, sir, that is correct.

Q. The statement that you filed in evidence is correct?

A. It is.

Q. As to the number of feet of gas and the value of the gas and the basis on which the gas was purchased and sold.

A. The statement shows the basis of the purchase of the gas at the mouth of the well on the land.

Q. The data, as far as it concerns the quantity of gas, price and basis is correctly stated in that statement?

A. Yes, sir, correctly stated.

13 On Re-direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, did you investigation show that the well was drilled on the land involved in suit?

A. Yes, sir.

Q. Referring now to the case No. 1168, United States vs. W. H. Matthews, please state whether or not you made any examination of the books of the Pure Oil Operat-

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ing Company, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana with reference to the production and value of the oil taken from the land involved in this suit, and if so, what was the result of your investigation?

A. I made such an investigation. My investigation shows that the Gulf Refining Company of Louisiana, run from the land involved in this case, from August, 1911, to February 27th, 1912, inclusive, \$20,099.23 barrels of oil of the value of \$12,572.85; the Gulf Refining Company of Louisiana records show this oil and value was divided and paid for as follows: L. Hanszen McMullen 3-64ths, 942.15 barrels of the value of \$589.32; Sam W. Mason 1-64th, 314.05 barrels of the value of \$196.45; D. P. Eubanks 1-64 or 314.05 barrels of the value of \$196.45; F. A. Leonard 1-64, 314.05 barrels of the value of \$196.45; W. H. Matthews 1-64, 314.05 barrels of the value of \$196.45; H. E. Barnes, 1-64, 314.05 barrels of the value of \$196.45; Total royalty paid by the Gulf Refining Company of Louisiana, \$2,512.50 barrels of the value of \$1,571.60; The Pure Oil Operating Company 7-8 of the oil produced 17,586.83 barrels of the value of \$11,001.25; the records of the Standard Oil Company of Louisiana show that the Company run from the land in suit from February 27th, 1912, to December 31st, 1917, a total of 69,989.59 barrels of oil of the value of \$68,544.98. This oil and value was divided by the Standard Oil Company of Louisiana as follows: L. Hanszen McMullen 3-64 3,280.79 barrels of oil of the value of \$3,213.13; F. A. Leonard 1-64 1,093.62 barrels of oil of the value of \$1,071.05; D. P. Eubanks 1-64 1093.52 barrels of oil of the value of \$1,070.99; W. H. Matthews 1-64 1,093.64 barrels of oil of the value of \$1,071.05; Natalie Oil Company 157.08 barrels of oil of the value of \$242.53, H. E. Barnes and H. L. Heilperin 936.43

44 barrels of oil of the value of \$828.48; Sam W. Mason 1-64 1,093.61 barrels of oil of the value of \$1,071.05; Total royalty paid by the Standard Oil Company of Louisiana 8,748.69 barrels of oil of the value of \$8,568.28. Pure Oil Operating Company 7-8 61,240.99 barrels of oil of the value of \$59,976.70; Total royalty paid by the Gulf Refining Company of Louisiana and paid and held in suspense by the Standard Oil Company of Louisiana is 11,261.09 barrels of oil of the value of \$10,139.88; the grand total paid the Pure Oil Operating Company by the Gulf Refining Company of Louisiana and paid and held in suspense by the Standard Oil Company of Louisiana is 78,827.73 barrels of oil of the value of \$70,977.55; the total oil produced on the land is 90,088.82 barrels of the value of \$81,117.83.

Q. Mr. Neal, referring to these oil payments of the Standard Oil Company of Louisiana, as I understand it, you have figured the Standard Oil Company has taking the runs from February 27th, 1912, to December 31st, 1917, have you not?

A. I have.

Q. The Standard Oil Company has put in the record a statement showing the total amount taken from the land to April 1st, 1918, you did not figure that part?

A. I did not check the records of the Standard Oil Company from January 1st, 1918, to April 1st, 1918.

Q. I hand you statement marked Plaintiff "J", in suit No. 1168, entitled United States vs. W. H. Matthews, et al., and referring to that portion of the statement that relates to the production, value and division of the oil, I will ask you to state whether or not that is correct?

A. The statement is correct?

Q. Was the statement made from the books of the various companies?

A. It was.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "J", insofar as the same relates to the production, value and division of the oil taken from the land in controversy.

Filed in evidence and marked exhibit "J."

Q. Did you ascertain from your examination the date when the wells were drilled?

A. I have seen that statement but I have not the original record here (witness examines documents).

45 The records of the Pure Oil Operating Company shows that Hanszen Well No. 1 was not drilled. Well No. 2 was begun to be drilled June 20th, 1911, and completed August 3rd, 1911; Well No. 3 was begun May 4th, 1912 and completed June 7th, 1912; Well No. 4 was begun November 20th, 1913 and completed December 31st, 1913.

Q. I will ask you to state whether Well No. 5 was drilled on the land in suit?

A. Well No. 5 was just over the line, outside of the land involved.

Q. Did Well No. 5 produce oil?

A. Well No. 5 never produced any oil.

Q. From what wells was the oil in controversy taken?

A. Wells Numbers 2, 3 and 4.

Q. Did your investigation show that those wells were drilled on the land in suit?

A. Those wells were drilled on the land in suit.

Q. In your investigation, I will ask you to state who drilled the wells involved in this suit?

A. The Pure Oil Operating Company.

Q. The Pure Oil Operating Company delivered the oil to the Gulf Refining Company of Louisiana and to the Standard Oil Company of Louisiana in the tanks situated on the land in controversy?

A. Yes, sir.

Q. These companies removed the oil from the land through their pipe lines?

A. Yes, sir.

Q. Do the records show the oil was sold to the Gulf Refining Company and the Standard Oil Company of Louisiana by the Pure Oil Operating Company?

A. The records show that the entire production from the wells was run into the pipe lines of the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, and the division made of the oil by those companies. It is my understanding of the records that each of the royalty claimants sold their oil, as it was divided by the respective companies.

Q. What was the total amount, in value and oil produced from the wells, situated on the land in
46 suit, by the Pure Oil Operating Company?

A. The grand total of the oil produced by the Pure Oil Operating Company, on the land was 90,988.82, barrels of oil valued at 81,117.83. Of this the Pure Oil Operating Company received as its share 78,827.73 barrels of the value of \$7,977.95.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, the only connection the Standard Oil Company of Louisiana and the Gulf Refining Company of Louisiana have in this litigation is that those companies purchased the oil produced from the property?

A. Yes, sir.

Q. The operate pipe lines in this field and purchase oil that is produced in the field?

A. Yes, sir.

Q. In your examination of this case, did you investigate sufficiently to satisfy yourself as to the cost to the

Pure Oil Operating Company for the drilling, equipping and operation of each of the three producing wells, for the production of which this suit is brought?

A. Yes, sir.

Q. Will you state whether the result of your investigation appears on the statement referred to?

A. It does.

Q. What was the total cost of drilling, equipping and operating of these three wells?

A. The total cost of drilling, equipping and operating the wells to December 31st, 1917, was \$59,576.36.

Counsel for Defendants offers the statement referred to as Plaintiff's Exhibit "J" in evidence.

On Re-direct examination he said:

By Mr. Hunter:

Q. I will ask you to state the difference between the cost of drilling and equipping the wells in suit, Nos. 2, 3 and 4, and the total production of the oil, the difference in amount?

A. The difference between the total value of
47 the oil produced and the cost of drilling, equipping and operating is \$21,541.47.

Q. That is shown on the statement?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. Referring to the statement in suit No. 1168, what does your statement show as the total profit made by the Pure Oil Operating Company from the wells?

A. My statement shows that the Pure Oil Operating Company received to December 31st, 1917, \$70,977.95, and deducting from this the cost of drilling, equipping and operating \$59,576.36, there is left as the net value received by the Pure Oil Operating Company \$11,401.59.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. Is it not a fact that the Pure Oil Operating Company produced all of the oil from this land, drilled the wells and produced the oil?

A. The Pure Oil Operating Company drilled the wells and produced all of the oil from the land.

Q. The difference between the total value of the oil produced and the total cost of drilling and equipping the wells was what?

A. \$21,541.47.

Q. Now taking up the case No. 1170, United States vs. D. P. Eubanks, et al., I will ask you to state whether or not you made an examination of the records of the Gulf Refining Company of Louisiana in order to ascertain the quantity and value of the oil produced from the land in suit?

A. Yes, sir.

Q. What was the result of your investigation?

A. My investigation shows that the Gulf Refining Company of Louisiana ran from the land in question from September, 1910, to August, 1913, when well ceased to produce a total of 7,130.93 barrels of oil of the value of \$4,806.43. The oil was divided as follows: J. L. Urquhart 297.10 barrels of the value of \$200.21; T. D. 48 Starnes 148.58 barrels of the value of \$100.12; Eugene Hanszen 32.96 barrels of the value of \$31.30; J. B. Files 445.67 barrels of the value of \$300.38;

D. P. Eubanks 561.15 barrels of the value of \$369.14. Making the total royalty paid of 1485.46 barrels of the value of \$1001.15. The Gulf Refining Company of Louisiana, retained as its shares of the oil 5645.47 barrels of oil of the value of \$3805.28. The pipe line earnings of the Company was \$713.09.

Q. Mr. Neal, I hand you statement marked Plaintiff "K", insofar as it shows the production and value of the oil in suit and I will ask you to state whether that statement in that respect is true?

A. It is true and correct.

Q. From whom was the information received, upon which that statement is based?

A. From the records of the Gulf Refining Company of Louisiana.

Q. From your investigation of this matter, did you ascertain that the well was drilled on the land involved in this suit, by the Gulf Refining Company of Louisiana?

A. The well was drilled on the land involved in this suit by the Gulf Refining Company of Louisiana.

Q. Mr. Neal, do you desire any further information in regard to the cost of drilling and operating in this case, than what you have in order to testify on the subject of the cost of drilling and operating?

A. I would like to have an itemized statement of the cost of drilling and equipping of the well in this suit for the purpose of checking on the ground the property removed from the well and the property moved to the well.

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, have you made any investigation as to the cost of drilling, operating and equipping this well?

A. I have checked the records of the Gulf Refining Company of Louisiana, as to the cost of drilling, equipping and operating the well in this suit, and find that the total cost of drilling, equipping and operating the well September 1910 to August 1913, was \$13,628.94.

Q. Are you satisfied as to the correctness of
49 that?

A. I am satisfied as to the correctness of that.

Q. What additional statement do you desire relative to this matter?

A. An itemized statement of the cost of the drilling and the equipment that went into the well.

Q. That is because the well has been abandoned and you wish to ascertain just how much credit should be given to them?

A. So if there is any credit.

Q. Mr. Neal, in your investigation in this suit, you have familiarized yourself with the cost of drilling a well and operating wells in this field?

A. Yes, sir.

Q. Are you satisfied from this knowledge, that it must have cost the Gulf Refining Company of Louisiana more than \$4518.37 to have operated that well, and drilled it during the time it was in operation?

A. My investigation showed that the cost to the Gulf Refining Company of Louisiana for the drilling, equipping and operating the well was \$13,628.94. In this amount however, there is included the equipment that I have no itemized statement of, which is credited to that amount.

Q. That is the equipment that has been removed from the property?

A. Yes, sir.

Counsel for defendants states that the itemized statement requested, will be furnished.

Q. Mr. Neal, with the experience that you have had in your investigation of the cost of drilling, equipping and operating wells, I will ask you if the actual cost of drilling the well to the Gulf Refining Company of Louisiana and the cost of operating the well, leaving out the question of equipment, would exceed the amount received by the Gulf Refining Company of Louisiana from the sale of the oil from that well?

A. Yes, sir.

Q. Did you make an investigation as to when drilling was begun of this well?

A. Yes, sir.

Q. What date was that?

50 A. They began drilling the well April 24th, 1910?

Q. When was the well completed?

A. I do not know.

Counsel for Plaintiff offers the statement marked Plaintiff "K" insofar as the same relates to the production, value and division of the oil taken from the land in controversy.

Filed in Evidence and marked exhibit "K."

Counsel for Defendants offers the statement marked Plaintiff "K" in evidence.

Q. Mr. Neal, did you make an examination as to the production and value of oil involved in suit No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.?

A. I did.

Q. Upon what was your examination based?

A. It was based upon an examination of the books of the purchasing companies, the Gulf Refining Company of Louisiana and the Standard Oil Company of Louisiana, which Companies purchased all the oil run from the land in this suit.

Q. Did you also make an examination of the records of the Pure Oil Operating Company?

A. Yes, sir.

Q. What was the result of your investigation as regards the Pure Oil Operating Company, as to the production?

A. The result of my investigation shows that there was produced from Wells Nos. 1 and 5, called Hanszen Mineral Claim, from October, 1910, to December 31st, 1917, 58,633.74 barrels of oil of the value of \$47,770.81. The records of the Gulf Refining Company of Louisiana show that the Company run the oil from October, 1910, to February 27th, 1912, and that the oil was divided and paid for by that Company as follows: Lydia Hanszen McMullen 1-32 642.49 barrels of oil of the value of \$365.28; Sam W. Mason 1-64 321.24 barrels of the value of \$182.64;

51 D. P. Eubanks 1-64 321.24 barrels of the value of \$182.64; R. L. Stringfellow 1-32 642.49 barrels of the value of \$365.28; H. E. Barnes 1-32 642.49 barrels of the value of \$365.28; Total Royalty paid by the Gulf Refining Company of Louisiana \$1,461.12; The Pure Oil Operating Company received 7-8 of the oil or 17,989.49 barrels of the value of \$10,227.79. The total oil run from the land by the Gulf Refining Company of Louisiana was 20,559.69 barrels of the value of \$11,688.91; the records of the Standard Oil Company of Louisiana, show that that Company run the oil from the wells known as Hanszen Mineral Nos. 1 and 5 from February 27th, 1912, to December 31st, 1917, and that during that time the Company run from the land 38,074.05 barrels of oil

of the value of \$36,081.90. The records of the Company show that the oil was divided as follows: Lydia Hanszen McMullen 1-32 1,189.81 barrels of the value of \$1,127.56; Sam W. Mason 1-64 594.90 barrels of the value of \$563.78; D. P. Eubanks 1-64 or 594.90 barrels of the value of \$563.78; R. L. Stringfellow 1-32 1,189.81 barrels of the value of 1,127.56; Natalie Oil Company, H. E. Barnes and H. L. Heilperin 1-32 1,189.81 barrels of the value of \$1,127.56. The total value of the royalty paid and held in suspense by the Standard Oil Company of Louisiana is \$4,510.24; The Pure Oil Operating Company got seven-eighths amounting to 33,314.82 barrels of the value of \$31,571.66; the total royalty paid by the Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana, and held in suspense by the Standard Oil Company of Louisiana is \$5,971.36; the total oil and value representing the Pure Oil Operating Company's 7-8 is 51,304.52 barrels of the value of \$41,799.46.

Q. Did the Pure Oil Operating Company, one of the Defendants drill wells Nos. 1 and 5 on the land in suit, and did you learn that fact from your investigation?

A. They did, the well was drilled for that Company.

Q. The Gulf Refining Company of Louisiana took the oil from Oct., 1910 to February 27th, 1912?

A. Yes, sir.

Q. The Standard Oil Company of Louisiana took the oil from February 27th, 1912, to December 31st, 1917?

A. Yes, sir.

Q. When were the wells drilled?

A. The Hanszen Mineral No. 1, as shown by
52 the statement of the Pure Oil Operating Company was begun to be drilled on July 15th, 1910, and completed September 10th, 1910. Well Number five was begun November 15th, 1913, and completed January 17th, 1914.

Q. Mr. Neal, I hand you statement marked Plaintiff "L" in this case and I will ask you to examine same with respect to that portion of the statement which relates to the production and value of the oil and see whether or not the same is correct?

A. The statement is correct.

Counsel for Plaintiff offers the statement identified by the witness and marked Plaintiff "L" insofar as the same relates to the production and value of the oil in suit.

Filed in Evidence and marked exhibit "L."

On Cross Examination he said:

By Mr. Herold:

Q. Mr. Neal, counsel for the Government asked some questions about the Gulf Refining Company and the Standard Oil Company of La. taking the oil from the land, is it not a fact that the only relation those companies had to this suit, arose out of the purchase of the oil produced by the Pure Oil Operating Company?

A. That is a fact.

Q. They did not operate any wells?

A. No, sir.

Q. Those Companies own pipe lines in the Caddo field?

A. Yes, sir.

Q. And are in the business of purchasing oil?

A. Yes, sir.

Q. They purchased oil from the Pure Oil Operating Company and lessors?

A. Yes, sir.

Q. In the course of your examination of the facts relating to these cases, did you have occasion to examine into the question of the cost of drilling, equipping and operating these two wells?

A. I did.

Q. Will you please state what was the cost
53 of drilling and equipping the wells in contro-
versy?

A. The cost of drilling and equipping the Hanszen Mineral No. 1 was \$15,324.22; the cost of drilling and equipping the Hanszen No. 5 was \$10,982.16.

Q. What was the cost of operating these wells?

A. The cost of operating the Hanszen Mineral No. 1 from August, 1911, to December 31, 1917, was \$18,512.56; the cost of operating No. 5 from July, 1914, to December 31st, 1917, was \$10,097.76.

Q. What was the total cost to the Pure Oil Operating Company for drilling and operating up to December 31st, 1917?

A. \$54,916.70.

Q. What was the total value of the oil produced by the Pure Oil Operating Company, as its 7-8?

A. \$41,799.46.

Q. You are satisfied with the correctness of those figures?

A. Yes, sir.

Counsel for Defendants, in connection with this cross examination, offers the statement referred to as Plaintiff Exhibit "L" in evidence.

Q. Mr. Neal, you have stated that the drilling of the Hanszen No. 1 began July 15th, 1910, by that do you mean the actual boring?

A. That is my understanding of it. The records show that drilling began that day.

Q. It took of course some time previous to that to get the derrick up and the rig in place and make the necessary preparations to start to drilling?

A. Yes, sir. Of course I do not know that of my personal knowledge.

Q. You do not know, of your own personal knowledge anything about the date they began work in preparing to begin drilling?

A. I do not.

On Re-direct examination he said:

By Mr. Hunter:

Q. How was the oil taken from the land by the Gulf Refining Company of Louisiana, and the Standard Oil Company of Louisiana?

A. The Gulf Refining Company of Louisiana
54 and the Standard Oil Company of Louisiana
connected their pipe lines with the tanks constructed on the land, into which tanks the wells were pumped.

Q. The oil was sold by the Producing Company to these Companies?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. The Pure Oil Operating Company constructed these tanks on the property?

A. Yes, sir.

Q. And the oil was pumped from the wells into those tanks?

A. Yes, sir.

Q. And the Pipe line Companies purchased the oil and took the oil from the tanks?

A. Yes, sir.

By Mr. Storey:

Q. That is true with reference to all other Companies developing oil and delivering it in the field?

A. Yes, sir.

Q. The statement shows the amount of royalties paid and held in suspense, have you any data showing that held in suspense?

A. The Standard Oil Company's statement shows the amount of oil held in suspense, as I understand it. The Company suspended the payment of all royalties after this suit was filed and held the value of the oil in suspense.

Q. Is there any data in the record showing the amount paid in royalties and the amount held for the account of the Royalty Owners?

A. Yes, sir.

On Re-direct Examination he said:

By Mr. Hunter:

Q. Mr. Neal, I direct your attention to suit No. 1172, entitled United States vs. Sam W. Mason, et al, and will ask you to state whether or not you made an examination of the books and records of the Gulf Refining Company of Louisiana, in order to ascertain the quantity of the oil produced from the land in suit, and its value?

A. I made such an investigation.

55 Q. Did you make a statement showing the production, value and division of the oil?

A. I did.

Q. Please state what you found with reference to the total production up to December 31st, 1917?

A. The records of the Gulf Refining Company of Louisiana shows that that Company run the oil from the land in question from May, 1910, to December 31st, 1917,

and that a total of 94,004.43 barrels of oil of the value of \$67,732.94. The records show a division of the oil as follows: R. L. Stringfellow and J. B. Stockley 396.63 barrels of the value of \$158.65; Mrs. Lydia H. McMullen 7,041.08 barrels of the value of \$3,708.30; E. Hanszen 941.87 barrels of the value of \$952.44; D. P. Eubanks 1,883.71 barrels of the value of \$1,905.00; Sam W. Mason 1,883.71 barrels of the value of \$1,905.00; R. L. Stringfellow 2,346.74 barrels of the value of \$1,776.54; J. B. Stockley 1,173.34 barrels of the value of \$888.27; the total royalty paid and held in suspense by the Gulf Refining Company of Louisiana was \$11,294.20.

Q. Does the statement show how much royalty has been paid and how much is held in suspense?

A. No, sir, the statement don't show; the statement of the Gulf Refining Company of Louisiana as shown on page 4 of this statement shows the amount of royalties that has been paid, each royalty claimant and the amount held in suspense by the Gulf Refining Company of Louisiana. The total value of the oil retained by the Gulf Refining Company of Louisiana, as its share from this land was \$56,438.75; the pipe line earnings on oil run was \$8,367.97 showing a total of \$64,806.71.

Q. Do your records show how many wells were drilled on this tract of land and when they were drilled?

A. There is just one well on the tract known as Mason Mineral No. 1.

Q. When was the first work done?

A. The first work done, according to the records of the Gulf Refining Company of Louisiana, was April 16th, 1910.

Q. What do the records show with reference to who drilled the well on this land?

A. The well was drilled by the Gulf Refining Company of Louisiana.

Q. You made this statement, did you not?

A. Yes, sir.

Counsel for Plaintiff offers in Evidence the statement marked Plaintiff "M" identified by the witness, insofar as it relates to the production and value of the oil taken from the well in suit.

Filed in Evidence and marked exhibit "M."

On Cross Examination, he said:

By Mr. Herold:

Q. Mr. Neal, have you had occasion in the course of your official duties to investigate and ascertain the cost of drilling, equipping and operating this well?

A. I did.

Q. To your satisfaction?

A. Yes, sir.

Q. What was the total cost for drilling, equipping and operating the well to December 31st, 1917?

A. \$34,067.13.

Q. In your testimony and in your statement, you make reference to pipe line earnings on oil runs, what do you mean by that?

A. The Gulf Refining Company of Louisiana operates a system of pipe lines from the district in which the oil is produced, to connect with their receiving tanks on the Texas line and the sum of five and ten cents per barrel is charged for the oil run through that line.

Q. In other words it is for the carriage of the oil?

A. Yes, sir, that is supposed to be deducted from the market value of the oil, as I understand it.

Q. This amount that you have placed on your statement here, of pipe line earnings of oil run, is in addition to the market value of the oil the day it was produced?

A. The amount if in addition to the amount allowed for the oil in the tanks on the land represents
57 the Gulf Refining Company delivered in the tanks on the Texas line, which would be \$8,367.97 in addition to the amount paid in the field.

Q. The sum of \$56,438.74 represents the value of the oil in the tanks on the day that it is produced?

A. It represents the value of the oil on the land?

Q. On the basis of the market price of the oil at the time it was produced?

A. Yes, sir.

Q. And the \$64,806.71 represents not the value of the oil in the tanks on the property, but the value of the oil delivered on the Texas line?

A. Yes, sir.

Q. That is to say the value of the oil, plus the freight or pipe line charges?

A. Yes, sir, that is correct.

In connection with the cross examination of the witness counsel for defendants offers the document heretofore marked Plaintiff "M" in evidence.

On Re-direct Examination he said:

By Mr. Hunter:

Q. This statement shows, does it not—your investigation shows in connection with the statement that the Gulf Refining Company of Louisiana produced the oil from this tract of land of the value of \$67,732.93?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Herold:

Q. That is the value delivered on the Texas line?

A. That is the value in the field with the royalties.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. That amount including the piping?

A. No, sir, the amount stated as the amount of the value of the oil in the tanks on the land.

58 Counsel for Plaintiff offered in Evidence in the case of the United States vs. Arkansas Natural Gas Company, No. 1159, a certified extract from the Louisiana tract book showing the situation in Section Twenty-eight, Township Twenty-two North of Range Fifteen West, Louisiana meridian.

Filed in Evidence and marked exhibit "N."

Counsel for Plaintiff offered in Evidence in these consolidated case, a certified copy of letter dated June 1st, 1911, from the Assistant Commissioner of the General Land Office, to the Honorable Murphy J. Foster, said letter having previously been offered in the suit of the United States vs. Henry Hunsicker, No. 1156, and marked Plaintiff "A" therein.

Filed in Evidence and marked exhibit "O".

Plaintiffs rest.

Counsel for Defendants offers in Evidence in the case of the United States vs. Henry Hunsicker, No. 1156, notice of location of Henry Hunsicker, et al., filed and recorded March 22nd, 1910, as recorded in Conveyance Book No. 69, page 216 of the Recorder's office of Caddo Parish, Louisiana.

To be filed in Evidence and marked Defendants No. 2.

Counsel for Defendants offers in evidence the notice of location of C. J. Greene, Jr., filed and recorded March 22nd, 1910, as recorded in Conveyance Book No. 59, page 216 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit No. 3.

Counsel for Defendants offers in Evidence Power of Attorney from Charles J. Greene, Jr., dated March 22nd, 1910, to Henry Hunsicker and lease executed by C. J. Greene, Jr., by Henry Hunsicker, Attorney in fact and by Henry Hunsicker, to the Producers Oil Company, dated March 28th, 1910, filed and recorded August 18th, 1911, recorded in Book No. 67, page 621 of the
59 Recorder's Office of Caddo Parish, Louisiana.

Filed in Evidence and marked exhibit No. 4.

Counsel on behalf of the Texas Company Division Order dated August 8th, executed by the Producers Oil Company, C. J. Greene, Jr., and Henry Hunsicker, with leave to substitute a certified copy thereof.

Filed in Evidence and marked exhibit No. 5.

In suit No. 1154, United States vs. W. W. Green, et al., Counsel for Defendant offers in Evidence act of sale from Humphreys Oil and Gas Company to Palmer and Heilperin attached to and made a part of the answers herein on Mrs. H. L. Heilperin to the Interrogatories.

Filed in Evidence and marked exhibit No. 6.

Counsel for Defendants Pure Oil Operating Company offers in evidence notice of Mineral location by Lydia Hanszen, et al., dated April 2nd, 1910, as recorded in Conveyance Book 59, page 267 records of the Parish of Caddo, with leave to substitute a certified copy thereof.

To be filed in Evidence and marked exhibit No. 7.

S. L. CRONIN, a witness for the Defendants being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin, what position do you hold and with what Company?

A. I am with Ohio Central Gas Company now.

Q. In 1910, were you in charge of the interest of the Pure Oil Operating Company in the Caddo field?

A. Yes, sir.

Q. Are you familiar with what is known as well Greene No. 1?

A. I am.

Q. That well, I believe was drilled by the
60 Humphreys Oil and Gas Company, on a lease of
W. W. Green?

A. Yes, sir.

Q. Who claimed under a Mineral location?

A. Yes, sir.

Q. Did they set up any claim?

A. Yes, sir, as lessees.

Q. Of whom?

A. Mrs. Hanszen, Eubanks and Barnes.

Q. That is the land embraced in the suit of the United States against Mrs. McMullen, et al?

A. Yes, sir.

Q. You claim that the Gilbert No. 1 was on the Hansen land?

A. Yes, sir. We thought that the section line was South of that well.

Q. In other words the section line was located different from what the surveyors located it?

A. Yes, sir.

Q. This well was situated between the line run by Green and as run by you?

A. Yes, sir.

Q. After Heilperin and Palmer acquired the rights of the Humphrey Oil and Gas Company you acquired your rights?

A. Yes, sir.

Q. Now, what was the nature of that agreement?

A. We took that well over under a compromise trade with Mr. Heilperin. I could not go into the details, but it was a pretty long agreement.

Q. You set up that June 16th, 1914, that you made an agreement with Heilperin and Palmer, under which you took over the operation of the well?

A. Yes, sir.

Q. The Pure Oil Operating Company continued to operate that well after that date?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. This well was drilled by the Humphrey's Oil and Gas Company under the W. W. Greene Mineral
61 location?

A. Yes, sir, that was what they knew it as, that is what it was commonly called.

Q. W. W. Green location?

A. Yes, sir.

Q. After the Pure Oil Operating Company took over the well under the agreement with Palmer and Heilperin. W. W. Green continued to receive the royalties?

A. I could not tell you?

Q. Don't your records show, or did you sever your connections?

A. No, sir, but I have not looked at the old agreement, and could not say about that division order, so that I do not know who all the owners were. I done all my trading with Mr. Heilperin.

Q. At any rate the Pure Oil Operating Company did not drill this well?

A. No, sir.

Q. They took over the well from the assignees of W. W. Green?

A. Yes, sir.

Q. And operated under an agreement?

A. Yes, sir.

Q. Green did make a mineral location, did he not?

A. I never examined the records, but he was on there.

Q. Claimed a mineral location?

A. Yes, sir.

On Re-direct examination he said:

By Mr. Herold:

Counsel for Defendants offers in Evidence the contract between H. L. Heilperin and Palmer, and the Pure Oil Operating Company, annexed to the answer of the Pure Oil Operating Company to the interrogatories.

Q. The net result of the Pure Oil Operating Company's connection with this well was a loss?

A. Yes, sir.

In suit No. 1159 entitled United States vs. Arkansas Natural Gas Company.

62 JAMES W. NEAL, being sworn as a witness for defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Neal, in your examination of the case of the United States vs. Arkansas Natural Gas Company, did you have occasion to make an investigation of the cost of drilling the well?

A. Yes, sir.

Q. Can you state what was the cost of the drilling of that well?

A. The cost of drilling and equipping the well known as Mason No. 1, Arkansas Natural Gas Company was \$4,842.30?

Q. Royalties were paid by the Arkansas Natural Gas Company, in what sum?

A. The royalties, either rentals or royalties were paid of two hundred dollars a year was paid by the Arkansas Natural Gas Company from May, 1910, to May, 1916, amounting to \$1400.00.

Q. Making a total expense to that Company of how much?

A. A total expense to the company of \$6,242.12.

Q. And according to your statement making a total profit to the Company of how much?

A. \$804.42.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Neal, referring to this case and your statement marked "I" I will ask you to state what is the difference between the value of the gas produced in this case and the cost of drilling and operating the well, without reference to the amount of royalties paid by the Arkansas Natural Gas Company?

A. The difference between the total value of the gas from the well and the cost of drilling and equipping the well is \$2204.42.

Q. Is that shown on the statement?

A. That is shown on the statement.

W. G. LEET, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Leet, in what business are you engaged?
63

A. Manufacturing of gasoline at the present time.

Q. You have been in the business of piping and selling natural gas?

A. Yes, sir.

Q. For how many years?

A. About twenty-four years, twenty-three or twenty-four years, over Twenty years.

Q. You are familiar then with the method of measuring gas?

A. Yes, sir.

Q. The gas being handled, gas being of a gaseous substance, of course the amount of gas contained in a given receptacle at any time depends upon the pressure?

A. Yes, sir, in proportion to the atmosphere.

Q. What is the atmospheric pressure?

A. Accurately speaking 14,781 thousand pounds per square inch but we always use fifteen pounds to the inch flat in calculating gas measurement.

Q. A given quantity of gas, say a thousand feet, the atmospheric pressure would be less than a thousand pounds, be a pressure greater than the atmosphere the greater the pressure, if greater than the atmosphere the smaller space it would fill cubically?

A. Yes, sir.

Q. I notice in the statement furnished by Mr. Neal, that a portion of the gas shown on the statement was measured at eight ounces base, that is eight ounces above the atmospheric pressure?

A. Yes, sir.

Q. Other portions of the statement figure on a ten pound base, which means ten pounds above atmospheric pressure?

A. Yes, sir.

Q. The statement furnished by Mr. Neal of the amount of gas run by the Arkansas Natural Gas Company from July 1st, 1911, to April 30th, 1912, is given as 4744838 thousand cubic feet based on an eight ounce base, there is subtracted from that as gas purchased from other concerns run into the man 2,395,993.000 cubic feet on ten ounce base. If that quantity of gas figured at a ten pound base were figured at an eight ounce base, what would be the amount of gas so purchased from other concerns?

64

A. It would be, that is to say 2,395,993,000 cubic feet purchased of a ten ounce base, at an eight ounce base would be 2,662,221,000 cubic feet.

Q. Or how many million feet more?

A. 313,269,000 feet more, than if figured on a ten ounce base, an increase of approximately twenty-six per cent, I should judge.

Q. Then the difference between the amount of gas purchased and the amount of gas sold would be reduced by just that amount?

A. The selling pressure would be increased just that much, the purchase pressure reduced that much—I might make it a little plainer by stating the difference between the amount of gas sold at eight ounce and the same amount bought at ten pound pressure, would be 313,369,000 feet.

Q. In order to measure, to make a comparison of the two amounts in the two items we have to figure them at the same basis?

A. Yes, sir.

Q. Now subtract, figure both the purchase and sale of the gas on eight ounce base, would not the difference between the two be reduced by the amount you have just given of 313,369.00?

A. In the base of eight ounce selling it would.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Leet, have you examined the statement marked Plaintiff "I"?

A. Just a part of it, I did not notice all of it.

Q. Mr. Neal stated that this statement has been compared by himself and a representative of the Arkansas Natural Gas Company, and that they agreed upon this statement as to the quantity and value of the gas gotten from this line, now referring to the amount of gas extracted from the land, I will ask you to state, in the event this gas was transported, in a pipe line from the well to

Little Rock, Arkansas, whether or not there would be any leakage?

A. Yes, sir, there would be.

Q. Would that have any bearing upon the calculation, made by Mr. Neal and a representative of the Arkansas Natural Gas Company, as shown by this statement?

65

A. Well, that is rather a difficult question to answer, yes or no, I may state that previous to the activity of the Conservation Commission two years ago, the leaking was very much more than now, and we used to figure it run from forty to fifty per cent, and the contracts were usually based on a ten ounce basis, which generally took care of the leakage and a little more, but they wanted to sell the gas and willing to make that contract, and they usually delivered it under those conditions. What the conditions are in this agreement here I do not know. I make that statement because the contracts were to deliver the gas at the well for so much per thousand, ten pounds basis, be in recent years the leakage has been unusually small, as the Arkansas Natural Gas people watch those things well, and do not have any leaking except comparatively small.

Q. You do not represent the Arkansas Natural gas people?

A. No, sir, none whatever.

Q. You are not familiar with the figures used by Mr. Neal and their Agent in making up this statement?

A. No, sir, only what they say on the statement.

Q. Assuming that this gas was run, as shown on the statement from July 1st, 1911, to September 30th, 1912, you see nothing unusual in the calculation made in this case?

A. Well, it is inaccurate, inasmuch as the subtraction was made based on ten pounds and the sale price was

at the eight ounce but there is nothing unreasonable about it at all, at least we would not think so, and I would not say so unusual, either unusual or unreasonable.

Q. Such calculation would be in accordance with the custom prevailing at that time, from July 1st, 1911, to September 30th, 1912?

A. Yes, sir, that would be in accordance with conditions at that time.

Q. So that this calculation which shows the production of 4,744,838,000 cubic feet at the 8 ounce base, showing the amount of gas purchased at the ten ounce base, was in accord with the usual practice at that time?

A. Yes, sir. Of course the method was the same, only
 66 as I tried to explain the contracts at that time, was reasonable for it, of course the basis was the same now as then.

Q. But the practice of handling gas was different at that time?

A. Yes, sir, for the past two years more particular, since the conservation commission has become active. The members of the Commission do not seem disposed to allow anyone to allow a leak, they propose to stop the leaks, that is the basis they work on, and I think there are some new contract based on pretty nearly the same thing.

On Re-direct examination he said:

By Mr. Herold:

Q. Have you heard of any contracts within the last few years of anything less than a two pound base?

A. I do not remember of any.

Q. In other words the ten pound basis was only used at that time when there was a limited market and a large supply?

A. Well, that is pretty nearly so. And as I say at the present time the disposition is to eliminate the leakage proposition entirely and try to make contracts based on figuring no leakage or a very small leakage.

Counsel for Defendants offer in evidence the notice of mineral location of Lydia Hanszen and Sam W. Mason, dated or recorded May 11th, 1910, in book No. 59, page 439 of the records of Caddo Parish, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in Evidence act of lease from Lydia Hanszen to H. L. Grayson, dated May 23rd, 1910, as recorded in Conveyance Book page of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offers in evidence assignment of lease from H. L. Grayson to the Arkansas Natural Gas Company as recorded in Conveyance Book, page of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

67 In suit No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.

Counsel for Defendant offers in Evidence notice of mineral location, dated April 2nd, 1910, as recorded in Conveyance Book No. 59, page 267 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in evidence act of lease dated April 21, 1910, from Mrs. Lydia Hanszen, et al., to E. H. Jennings, as recorded in Conveyance Book No. 59,

page 355 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in evidence Act of Assignment of E. H. Jennings to the Pure Oil Operating Company dated June 6th, 1911, as recorded in Conveyance Book No. 66, page 665 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

SAM W. MASON, a witness for the Defendant being first duly sworn testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Mason, you are one of the defendants in this case?

A. I am.

Q. One of the parties who made the mineral location of date April 2nd, 1910?

A. Yes, sir.

Q. Prior to making the mineral location on this property, had you consulted counsel as to your right to make the location, under the Placer Mineral Laws?

A. Yes, sir.

Q. Who did you consult?

A. I consulted Messrs. Thigpen & Herold and D. Edward Greer, one of the Attorneys for the Gulf Refining Company of Louisiana.

68 Q. You knew at that time about the order of December 15th, 1908?

A. Yes, sir, so called Roosevelt withdrawal order.

Q. What had you been advised by counsel with respect to this order?

A. I had been advised that the withdrawal order of Mr. Roosevelt had nothing to do with the location under the Placer Mineral laws for mineral development, that it only applied to other forms of entry for Homestead and locations under warrants.

Q. Had you been advised by counsel as to their construction of the power of the President to withdraw from mineral location?

A. Yes, sir, that was one of the things taken up at the time?

Q. What was the advice of counsel along those lines?

A. That the President had no authority, under the United States Placer Act to locate land to withdraw those lands from location for that purpose.

Q. And you proceeded to make location under that advice from counsel?

A. We did.

Q. The same counsel to which you have referred?

A. Yes, sir.

Q. In making the location did you all take physical possession of the property?

A. We did.

Q. By whom was the actual work of drilling the first well done on the Hanszen location?

A. By the Pure Oil Operating Company.

Q. Under a lease from the mineral locators?

A. Yes, sir.

Q. Can you testify on what date the work was begun, on the Hanszen claim?

A. Yes. I have not the exact date of that, I was not there at the time the well was commenced.

Q. You were not there when the well was commenced?

A. No, sir.

69 On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Mason, you were asked whether after making the mineral location physical possession was taken of the land, and I understood you to say there was?

A. Yes, sir.

Q. In what way was physical possession taken?

A. Well, we put a man on it, put a man on each one of these claims and he stayed there continuously until the lessees took possession.

Q. Was that land fenced?

A. Well, the Hanszen claim was fenced.

Q. When was it fenced?

A. The next day after the location.

Q. The entire claim?

A. Yes, sir, the fence was around the entire claim.

Q. What else was done?

A. Well the trees were marked around the location and notices put up at the various corners, a verbatim copy of the notice filed in the office of the Recorder.

Q. A copy of the mineral location?

A. Yes, sir, all made out, with the description, signature and everything that is on the original and they were placed on the claim.

Q. What was the Principal point relied upon by counsel in their advice to you as to the alleged invalidity of the first withdrawal order?

A. Two reasons were given. In the first place, it did not specifically withdraw from entry under the Placer mineral act, and in the second place, I was advised that they could find no authority for the President, no Executive authority of the President to suspend the operation of that Statute.

CRONIN, a witness for the Defendants being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin you have testified that you were in charge of the operations of the Pure Oil Operating Company in 1910?

A. Yes, sir, operating under the name of E. H. Jennings.

Q. Who was E. H. Jennings?

A. He was the President of the Pure Oil Company.

Q. At the time that this lease was taken it is shown to have been taken in the name of E. H. Jennings, but it belonged to the Pure Oil Operating Company?

A. Yes, sir, as they had not taken out a permit to do business in the State at that time?

Q. Until the Pure Oil Operating Company was licensed to do business under the name of the Pure Oil Operating Company, they did business under the name of E. H. Jennings?

A. Yes, sir.

Q. When this lease was taken by E. H. Jennings from Mes Hanszen and the other mineral locators, what did you do towards the discovery of oil?

A. We went to work and took possession of the property and went on to work on the property.

Q. When did you make the location for Well No. 1?

A. Sometime in April.

Q. When was the derrick built?

A. It was completed in April.

Q. The derrick was completed for Well No. 1 in April?

A. Yes, sir.

Q. How much did the derrick cost?

A. Two hundred and seventy-five dollars.

Q. What further steps did you all take then leading to the finding of oil or gas on the property?

A. We went on and did work there, built houses and fixed a place for our men and let the contract for the drilling of the well and had the well drilled.

Q. You built houses for the employees?

A. Yes, sir.

Q. Cleared some ground for the house?

A. Yes, sir, cleared ground.

Q. How many houses did you all build?

A. I think two small ones at that time.

Q. That was immediately following the
71 building of the derrick?

A. Yes, sir.

Q. Did you all build a warehouse there?

A. Yes, sir, afterwards, that Summer we built a warehouse.

Q. And let the contract for the drilling of the well?

A. Yes, sir.

Q. Who to?

A. The Woolf Drilling Company.

Q. When was the contract made with the Woolf Drilling Company?

A. I have not any record to show when the contract was made. We did not have a written contract, merely had a verbal agreement.

Q. About when was that?

A. My recollection is that it was the last of April or the first of June.

Q. You think that it was the last of April?

A. Last of May or the first of June, I am pretty near certain it was.

Q. Can you tell whether or not it was before the middle of June?

A. Yes, sir, it was before the Middle of June.

Q. Can you state positively whether it was before the middle of June that you made the contract?

A. Well, just as positive as I can be, where there is a chance for a man to be mistaken. There is always a chance for a man to be mistaken.

Q. What was that contract with the Woolf Drilling Company?

A. Five dollars a foot for the work and he furnished everything, and we were to pay him for the labor if we wanted to make a test in the upper sand, was to pay him twenty-five or fifty dollars a day for that extra time.

Q. You all had nothing to do with furnishing the material for the well?

A. No, sir.

Q. You were to pay five dollars per foot for the well?

Q. All of the material was furnished by the Contractor?

A. Yes, sir.

Q. The contract contemplated drilling when?

A. The well was drilled within a reasonable time. Woolf did not have a drilling outfit that he could put there at the time but he went right at it.

72 Q. How was the material brought to this land?

A. It had to be hauled in from Oil City.

Q. Were there any roads there at the time?

A. They were awful bad, had to cut a road out, and if I recollect right Mr. Woolf got stuck with the boiler.

Q. What was it necessary for the contractor to do before he commenced drilling.

A. He had to get his casing there and drilling rig, &c.

Q. What is the drilling equipment?

A. Rotary, boiler, engine and such as that.

Q. Requires a good deal of heavy material?

A. Yes, sir, very heavy, and had to go over rough roads and across the bayou.

Q. Can you testify positively Mr. Cronin, of your own personal knowledge, as to whether this contract was let during the month of June, 1910?

A. Yes, sir.

Q. You know that it was not later than June?

A. Yes, sir, I know it was not later than June.

Q. You think that it was before the middle of June?

A. Yes, sir.

Q. Was oil discovered in the first well?

A. Yes, sir.

Q. On what date?

A. It was about the 10th of September, I think it was September 10th.

Q. The well was completed September 10th?

A. Yes, sir, oil may have been discovered a few days before that.

Q. Now, before you all took this lease you consulted counsel as to the right to make the location and your rights under the lease?

A. Yes, sir.

A. I consulted L. C. Butler, Blanchard Barrett & Smith and Pugh, Thigpen and Herold.

Q. What did they advise?

A. They advise that I had a good title.

On Cross Examination he said:

73 By Mr. Hunter:

Q. Did you consult with these Attorneys with reference to the withdrawal order?

A. That withdrawal order was mentioned—I never heard of the Placer Mineral locations until I came here, April, 1910.

Q. Did you consult them with reference to the withdrawal order of December 15th, 1908, the Roosevelt withdrawal order?

A. Well, I expect that I did—I am not an Attorney, and I was in the land business and I consulted Attorneys on the title. I furnished them an abstract and asked if I had a reasonably good title, that is all that I inquired about.

Q. You knew that a mineral location had been made on this land?

A. Yes, sir, I knew it was a mineral location, whatever that was.

Q. You testified in regard to these dates, now have you used any memoranda?

A. Well the records here show that. The date I let the contract there is not any date on the record as to that.

Q. Then you are testifying from memory on that point?

A. Yes, sir.

Q. Is there anything in connection with the contract that fixes the date?

A. Yes, sir.

Q. What?

A. My wife was sick up here and my Father died and the Company allowed me to go for a month and I went home the last of the month or the first after I come here the first of April, and was at home the last of April and the first of May, and it was just as I started home that the contract was made with Mr. Woolf.

Q. Are you absolutely certain that you made that contract with Mr. Woolf during the month of June?

A. Yes, sir, just as I remember it, just as certain as I can be on anything.

Q. Mr. Woolf, of the Woolf Drilling Company, they are located in Shreveport?

A. Yes, sir.

Q. Now in regard to the time of drilling, as I understand this well was begun, or drilling was begun on the 15th of July, 1910?

A. Yes, sir.

Q. That was after the second withdrawal
74 order, or do you know anything about that?

A. I have heard it was.

Q. When was the derrick built?

A. Built in April, completed in April.

Q. What did it cost?

A. Two hundred and seventy-five dollars.

Q. What other work did you all do on this property besides build the derrick and erect two houses?

A. Yes, sir, there was a warehouse there?

Q. How many houses for the men?

A. Two little houses for the men.

Q. Do you remember the size of those houses?

A. Just small houses, one room houses built up with screens around and a roof over, just a place for the boys to stay in, cleaned it up so as to get in shape to live there.

Q. Do you remember what those houses cost?

A. No, sir.

Q. Approximately what did they cost?

A. I could not say.

Q. They were small houses?

A. Yes, sir.

Q. One room houses?

A. Yes, sir.

Q. Built two on this tract?

- A. Built more than that later on.
- Q. You said something about a warehouse?
- A. That was built later, but I could not tell the date when that was built.
- Q. You do not know whether that was built before the second withdrawal order or not?
- A. Well, that was built afterwards.

75 In Suit No. 1170, United States vs. D. P. Eubanks, et. al.

D. P. EUBANKS, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

- Q. Mr. Eubanks, you are one of the defendants in this case?
- A. Yes, sir.
- Q. Were you present on the land in controversy on March 31st, 1910, when J. C. Gibbs made his mineral location?
- A. Yes, sir.
- Q. What did Gibbs do towards making mineral location?
- A. It was surveyed and fenced up and notices put up.
- Q. Notices were put up at each corner?
- A. Yes, sir.
- Q. Were you interested with Mr. Gibbs in this location?
- A. Yes sir.
- Q. Did you assist him in taking possession of the land, putting the fence up and posting it?

A. Yes, sir.

Q. Before the location was made did you consult any counsel as to the right to make the location?

A. Yes, sir.

Q. Who were the lawyers that you spoke to?

A. Thigpen & Herold.

Q. What, if anything, did they advise you with respect to making the location?

A. That we had a perfect right to make the mineral location, that the land was open.

Q. This location was made by Gibbs for his and your joint account?

A. Yes, sir.

Q. Do you recall how long it was after the location before the lease was made to the Gulf Refining Company of Louisiana?

A. Made in a day or two, April 2nd, I think the lease was made.

Q. When did Gibbs take actual possession—when did they begin actual drilling on the land?

A. April 24th, 1910.

Q. That well was Gibbs No. 1?

76 A. Yes, sir.

Q. It produced oil in paying quantities?

A. Yes, sir.

Counsel for Defendant offers in Evidence notice of mineral location recorded in Conveyance Book No. 59, page 338, of the Conveyance Records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants offered in Evidence act of lease from J. C. Gibbs to Gulf Refining Company of Louisiana, as recorded in Conveyance Book No. 59, page

295 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

On Cross Examination he said:

By Mr. Hunter:

Q. Mr. Eubanks, you stated that you consulted Counsel with regard to this mineral location, why did you consult Counsel?

A. At the time we wanted to see whether we had the right to make the location—at that time people did not know whether we had a right or not, it was all new, and we wanted to see if it was worth while to make a location.

Q. You and Gibbs made the location, you were jointly interested with him?

A. Yes, sir.

Q. The location was made March 19th, 1910?

A. Yes, sir.

Q. There had been no development work before that time on this tract of land?

A. No, sir.

Q. The well was begun after the location was made?

A. Yes, sir.

Q. You stated that it was begun April 24th, 1910?

A. Yes, sir.

Q. You consulted Messrs. Thigpen and Herold in regard to the location?

77 A. Yes, sir, before we made the location.

Q. How long after the location was made was it that you leased the land to the Gulf Refining Company of Louisiana?

A. April 2nd was the date of the lease.

Q. Was there any arrangement prior to the location as to the leasing of the land, or that the land would be leased to them?

A. No, sir.

Q. You had knowledge did you not of the withdrawal order withdrawing these lands—didn't you consult Counsel with regard to that withdrawal order?

A. We consulted Counsel to see whether we had the right to make the location, and would not be time lost in making it.

Q. You consulted them in regard to the withdrawal order?

A. Yes, sir, I suppose that we did. I do not know that we consulted them though, at the time of making the location.

Q. Did you know of the existence of the withdrawal order of President Roosevelt, dated December 15th, 1908?

A. Yes, sir.

Q. Did that question figure in the consultations with the Attorneys the question of the validity of that withdrawal order?

A. I do not remember exactly, but probably it did.

In suit of United States vs. W. H. Matthews, et al.,
No. 1168.

S. L. CRONIN, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Cronin, when was work first done on the mineral location here in question, with a view of prosecuting for oil?

A. The Rig No. 1 was built in May or June, 1910.

Q. At what cost?

A. I could not say as to the cost exactly, but my recollection is that it cost two hundred and seventy-five dollars, that is what they cost at that time.

Q. Does your testimony relative to the advice of Counsel, which you received in the case of the United States vs. Mrs. Lydia McMullen, No. 78 1171, also apply in this case?

A. Yes, sir.

Counsel for Defendant offers in Evidence by reference, with leave to substitute a certified copy thereof, notice of mineral location as recorded in Conveyance Book No. 59, page 369 of the records of Caddo Parish, Louisiana.

Counsel for Defendant also offers in Evidence certified copy of lease from W. H. Matthews et al. to E. H. Jennings as recorded in Conveyance Book . . . page . . . of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

Counsel for Defendants also offers in evidence assignment from E. H. Jennings to the Pure Oil Operating Company, as recorded in Conveyance Book No. 66, page 665 of the records of Caddo Parish, Louisiana, with leave to substitute a certified copy thereof.

S. L. CRONIN, a witness for defendants being recalled, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. You have already testified that Mr. E. H. Jennings was the President of the Pure Oil Operating Company, and the leases taken in his name in this state was really for the benefit of that Company?

A. Yes, sir.

Q. At the time the lease was taken by E. H. Jennings, who was in possession of this property?

A. The locators.

Q. Was it fenced?

A. Yes, sir.

Q. What physical signs were present that showed that the land was located?

A. There were notices at every corner on this tract of land.

Q. To what effect?

A. To the effect that it had been located
79 upon by these locators and the description.

Q. After the lease, did you all take physical possession of the property?

A. Yes, sir.

Q. And built this rig in May or June, 1910?

A. Yes, sir, my recollection is that it was in May.

On Cross Examination he said:

By Mr. Hunter:

Q. How many wells were drilled on this tract of land?

A. We through that we drilled four, but Mr. Neal said that we only drilled three?

Q. What was the name of the first well.

A. Number Two was the first well drilled.

Q. What wells produced oil on this tract of land?

A. Nos. 2, 3, and 4.

Q. The production of oil involved in this controversy came from wells Nos. 2, 3 and 4?

A. Yes, sir.

Q. Any from Wells Nos. 1 and 5?

A. No, sir.

Q. Was well Number one ever drilled?

A. No, sir.

Q. You said that the rig was built in May, 1910?

A. Yes, sir.

Q. What do you mean by the rig?

A. Well, the derrick.

Q. The derrick?

A. Yes, sir, the derrick was built.

Q. That was all that was ever done with regard to well No. 1?

A. Yes, sir.

Q. Simply built the derrick?

A. Yes, sir.

Q. The well was not equipped, it was never drilled?

A. No, sir.

Q. It never produced any oil or gas or anything?

A. No, sir.

80 Q. When was well No. 2 begun?

(Witness examines records)

A. June 20th, 1911, that was when the drilling commenced, and the rig was built prior to that time and the material hauled, that is when they actually began drilling.

Q. When was the rig built and the material hauled for Well No. 2?

A. That well, I could not give it exactly, but it was built, the rig was built in May, I am pretty sure it was in 1911.

Q. So that there was no work done on the well No. 2, of any kind as I understand until May, 1911?

A. No, sir.

Q. And actual drilling was recommended June 20th, 1911?

- A. Yes, sir.
- Q. The well was completed August 4th, 1911?
- A. August 3rd, 1911.
- Q. When was well No. 3 begun?
- A. May 4th, 1912?
- Q. When was well No. 4 begun?
- A. It was begun November 20th, 1913.
- Q. Now No. 1, the rig of which was built in May, 1910, was never completed, no development made under that rig at all?
- A. No, sir, no well was drilled until June, 1911, when we began drilling Well No. 2.
- Q. No. 2 well was the first producing well on the tract?
- A. Yes, sir.
- Q. You stated that the locators were in possession when the Company acquired their rights? What possession did they have?
- A. They had it fenced.
- Q. What kind of a fence?
- A. Wire fence.
- Q. How many acres involved?
- A. Thirty-seven and a fraction.
- Q. What else did they have on it?
- A. They had a man on there in a tent.
- Q. You all went there, the Company went there and put up a derrick but did not do any drilling until 1911?
- A. That is right.

81 On Re-direct Examination he said:

By Mr. Herold:

- Q. Why was not well No. 1 drilled?
- A. Well, we thought that we had a certain amount of work to do there that would hold it for a year, that we

had complied fully with the requirements and was busy with other places around there and we did not go in and drill that land and when we got ready to drill they thought that No. 2 was a better location, and drilled it instead of drilling No. 1.

On Cross Examination he said:

By Mr. Hunter: .

Q. You did not drill Well No. 2 on the same location as No. 1?

A. No, sir.

Q. All you did before July 2nd, 1910, was to build the rig or derrick on this tract of land, did not do any drilling or development work?

A. No, sir, kept a man there like a person would to protect the property, we thought we had a right, and there was some timber there and we did not want the timber destroyed, so we kept a man on there.

Q. That was all that you all did before you began to drill Well No. 2 in 1911?

A. Yes, sir.

Case No. 1171, United States vs. Mrs. Lydia Hanszen McMullen, et al.

C. F. GRIGGS, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Griggs, what was your occupation in the Spring and Summer of 1910?

A. Well, I was working for the Pure Oil Operating Company.

Q. Pure Oil Operating Company?

A. Yes, sir.

Q. Where?

A. On Briar point.

Q. The property involved in this suit, the property known as the Hanszen Mineral location, was
82 known in the neighborhood there as Briar point?

A. Yes, sir.

Q. You were on the property that is involved in this suit?

A. Yes, sir.

Q. What were you doing there for the Pure Oil Operating Company?

A. I was watching the lease for them, before they started operations and after they started operations then I went to work for them.

Q. At the time that you went on the property was it open, was it cleared land?

A. No, sir, it was not cleared.

Q. What was the condition of the property?

A. It was full of briars, timber and underbrush and we cut it out in there, to get in there as the only way to get into that land on the point was by boat.

Q. Did you all clear a road through the place?

A. Yes, sir.

Q. When did the Woolf Drilling Company begin to haul in material for drilling the Hanszen No. 1?

A. That was some time in June, about June 10th or 11th, because I have a memoranda showing that about June 12th I checked some eight inch pipe, that was the only eight inch pipe they had there, because they did not have any other location there but that.

Q. All of the material to be used in drilling, had to be hauled over the road?

A. Yes, sir, and mighty bad roads at that time, Woolf had trouble getting the boilers in there, I think he was four or five days getting through in there with the boiler.

Q. Heavy boiler?

A. Yes, sir.

Q. Could you say whether or not Woolf was continuously working from the time they begun to haul the material in there until they actually begun drilling?

A. Yes, sir.

Q. They began hauling the material about the 10th of June?

A. Yes, sir, I do not know exactly but they began hauling about the 10th of June and I checked some pipe about the 12th.

Q. All of the material, pipes, boilers, etc.,
83 for drilling are very heavy?

A. Yes, sir.

Q. And this was a bad road?

A. Yes, sir, took about six days to haul the boiler in there.

Q. From Oil City?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. How far is Briar Point from Oil City?

A. About four miles.

Q. Oil City is on the Kansas City Southern Railway?

A. Yes, sir.

Q. And was at that time?

A. Yes, sir.

Q. Were you on this land constantly?

A. Yes, sir.

Q. You say that the material was hauled June 12th?

A. Yes, sir, about that time.

Q. Do you know when the drilling was begun?

A. No, sir, could not tell the exact date, but the records ought to show that, they have a log of the well and that shows the time they started the well. I do not know the exact date that they started drilling that well.

Q. Was the Woolf Drilling Company drilling any other wells in that neighborhood?

A. No, sir, not at that time. They were later on, drilled some across Stacy's landing, opposite Brian Point, but that was after the Hanszen No. 1 was started.

Q. There had been considerable development in the Caddo field in that section, at that time?

A. Yes, sir.

On Re-Direct Examination he said:

By Mr. Herold:

Q. The development that was then going on in Caddo Parish was on the opposite side of the lake?

A. Yes, sir.

84 Q. The development that Mr. Hunter speaks of was west of the lake?

A. Yes, sir.

Q. That was practically new territory being developed?

Q. What was the condition of these roads?

A. We did not have any roads you might say, they were mighty bad from Oil City on out, but from where they had to turn off to go to Briar point, did not have any roads, had to cut a way through there?

Q. Many swamps in there?

A. Yes sir, all through there.

By Mr. Herold:

These questions are not asked for the purpose of proving the land was swamp land, but is asked to show that it was almost impassable, that it was almost impossible to haul material in there.

Q. Now referring to the instance where it took six days to haul the boiler in there, why was that?

A. It was on account of the bad road, could not get through there hardly with a light load and a boiler is heavy, and in going through the timber the wheels would sink down, the ground was not firm, could not get through very easy?

Q. Would bog up?

A. Yes, sir.

Q. About what will one of these boilers weigh?

A. I do not know exactly what they do weigh.

Q. Very heavy boilers?

A. Yes, sir, very heavy, takes about eight mules to pull one through.

Q. The roads were very boggy?

A. Yes, sir, soft, all of that land in there was pretty soft, as we had to cut out a road, and it was a soft formation, and the wheels would sink down to the hub.

Q. You can testify that the Woolf Drilling Company was continuously at work getting ready to drill from some time in June until they actually begun drilling in July?

A. Yes, sir, had to do that to get the stuff there so that they could drill.

85

On Re-Cross Examination he said:

By Mr. Hunter:

Q. Referring to the road, was there not a road from Oil City in the direction of Briar Point?

A. Yes, sir, in that direction, to the Ananias Club House, that road has been there quite a number of years.

Q. That road was then in existence?

A. Yes, sir, I think so, I know it was.

Q. What is the distance from that road out to Briar Point?

A. Well, the way that they came it must have been, they came up by the Davis field, from there to Briar Point is about three-quarters of a mile I guess.

Q. Was it necessary to cut a road all the way from the Club House road to Briar point?

A. No, sir, but they had to cut the road, after they got in front of the Vaughn house from there into Briar Point.

Q. Do you know how much was spent in cutting the road?

A. What I mean by cutting the road was that they cut down the underbrush and trees to get by with the boiler. You take now in going over some of these roads they have to cut them out in order to haul a boiler through.

Q. Necessary in all places to clear the road of the timber in order to haul a boiler through?

A. Yes, sir.

Q. That is what you mean by cutting the road?

A. Yes, sir, and on the Briar point that claim was fenced up and we had to cut a road straight through that, cut down the cypress, and clear a place through the woods in order to haul the material in.

Q. Briar Point is situated on Ferry Lake, is it not, the point where the well was drilled?

A. Yes, sir.

Q. Accessable from the lake?

A. Yes, sir.

Q. Could it not have been reached by boat and the material carried there by boat?

86 A. I suppose they could have come in to Plum Point by boat, they landed in there, but the water was pretty shallow back in there in kind of a slough that ran through there.

Q. No material was hauled until some time in June?

A. Yes, sir, about June.

On Re-Direct Examination he said:

By Mr. Hunter:

Q. All the roads in the oil field have been cut up by the hauling of boilers and heavy material?

A. Yes, sir. We hauled a boiler day before yesterday from Stacy's landing to Mooringsport up to the depot and we had trouble with it there, to get through, there were bad roads and it is pretty hard to haul a boiler through there?

Q. Even in dry weather?

A. Yes, sir.

Q. After a rainy spell they have trouble in the oil field in hauling boilers and machinery?

A. Yes, sir, they do.

Q. Counsel asked you about the accessibility of this land by boats was there anyone operating barges or boats in Ferry Lake, as common carriers, for the purpose of handling other people's material?

A. No, sir, not at that time.

Q. The material had to be hauled to the land?

A. Yes, sir.

On Re-Cross Examination he said:

By Mr. Hunter:

Q. On which side of Ferry Lake is Briar Point, where Well No. 1 was drilled, west or east?

A. Well, Ferry Lake kind of runs, kind of on the North East side of Ferry Lake, if I understand it right, Ferry Lake comes in back of the Club house, to the mouth of James Bayou, and this was on James Bayou.

Q. This well was not the first well drilled in that territory?

A. I think that it was, that I know anything about, right on that side of the lake.

Q. That is down there?

A. Yes, sir.

Q. Where was the main development of the
87 oil field at that time? Near Mooringsport or Oil City?

A. At that time, not very much except Burr No. 1.

Q. How far was that from the Hanszen well?

A. Across the lake over there west of there, away over there.

On Re-Direct Examination he said:

By Mr. Herold:

Q. The Burr well was in Texas?

A. Yes, sir, Burr No. 1 was about the only well drilled around there that I know anything about.

On Re-Cross Examination he said:

By Mr. Hunter:

Q. Considerable development at Mooringsport at that time?

A. Yes, sir, the Hostetter well, was drilled in before that.

Q. The Caddo Oil fields come in about 1908?

A. Yes, sir.

Q. This well is in the Caddo field, not very far from Mooringsport five or six miles?

A. Yes, sir, five or six miles.

H. A. MALET, a witness for the Defendants, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. You are superintendent of the Gulf Refining Company of Louisiana?

A. Yes, sir.

Q. You have been in the oil business a good many years?

A. Yes, sir.

Q. What is the weight of boilers used in drilling operations?

A. About ten thousand pounds.

Q. About what is the weight of a drilling rig and appliances connected with drilling rigs?

A. We usually when we ship, order a car of a hundred thousand pounds.

Q. The rig and tools weigh about a hundred thousand pounds?

A. Yes, sir, approximately.

Q. What is the weight of the pipe in a well,
88 say twenty-three hundred feet, say of six inch and eight inch?

A. The six inch weighs about 1934 pounds and the eight inch pipe we use, weighs I think twenty-five pounds per foot and the ten inch, thirty-five pounds per foot.

Q. Weighs that per foot in length?

A. Yes, sir.

Q. In a well twenty-three hundred feet in depth, there is twenty-three hundred feet of six inch casing?

A. We, in the Caddo field usually set on an average about 2250 feet of six inch casing.

Q. And about how much of the eight inch?

A. Approximately eight hundred and fifty feet?

Q. How much of the ten inch?

A. About two hundred feet.

Q. In hauling drilling rigs over the roads in the Caddo field, is there much delay ordinarily involved?

A. Yes, sir, I would say a good deal, from three to ten days.

Q. In hauling?

A. Yes, sir.

Q. In the present field?

A. Yes, sir.

Q. Eight years ago, when the field was still new, the roads had to be cut out, were conditions better or worse then?

A. Much worse than now, have established roads now through the field.

The taking of testimony was adjourned until tomorrow morning at ten o'clock.

June 13th, 1918, all parties being present the taking of testimony was resumed.

W. C. WOOLF, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Woolf, in 1910, you were President and Manager of the Woolf Drilling Company?

A. Yes, sir

89 Q. Did the Woolf Drilling Company have a contract to drill a well on the Hanszen Mineral location, Hanszen No. 1?

A. Yes, sir.

Q. Your Company drilled that well?

A. Yes, sir.

Q. About how long were you, after the date of the contract in beginning to drill that well?

A. Between twenty and thirty days?

Q. During that twenty or thirty days, in which you were getting ready to drill what were you doing towards drilling the well?

A. Arranging and getting ready to drill, had to order the supplies and had to haul them out.

Q. Was there any delay that was avoidable in your work of preparing to drill this well?

A. No, sir.

Q. What caused the delay of twenty or thirty days?

A. Up to that time, 1910, we had no supply houses in Shreveport to amount to anything, and most of our material had to be shipped from Beaumont, Texas, in fact we bought a new outfit, new machinery and pipe and the drilling machinery for that well and it had to be shipped from Beaumont.

Q. What about the roads?

A. They were very bad and we had to do considerable work to get the roads in shape so that we could get out there.

Q. During the days that elapsed from the date of the contract to the date that you began actual drilling of the well, you were hauling material on the property and doing other things that were necessary for the drilling of the well?

A. Yes, sir.

Q. Was your contract written or verbal?

A. It was a verbal contract.

1c
No cross examination.

90 No. 1156, United States vs. Henry Hunsicker,
 et al.

HENRY HUNSICKER, a witness for the Defendant, being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Herold:

Q. Mr. Hunsicker, you are a resident of Caddo Parish, Louisiana?

A. Yes, sir.

Q. You have lived here a number of years?

A. Yes, sir.

Q. What position do you now occupy?

A. Treasurer of the State of Louisiana.

Q. Are you a Member of the Bar of this Court?

A. I am a Member of the Bar. I do not know whether I was ever admitted in this Court or not.

Q. You have been a member of the bar how long?

A. Since 1900.

Q. Are you the Henry Hunsicker who made location that is in contest in this case now before the Court?

A. Yes, sir.

Q. Before making that location, did you consult any other Member of the Bar here, as to your right to make same?

A. I did.

Q. With whom?

A. With yourself.

Q. What were you advised?

A. That the withdrawal order of Mr. Roosevelt did not apply to mineral locations.

Q. Further than that, what as to the Power of the President to withdraw the lands?

A. That he did not have the right, without Congressional authority.

Q. What authority did you receive from Counsel as to the Power of the President to withdraw without Congressional authority?

A. That he did not have any right.

Q. Was this advice received by you before making your location?

A. It was.

Q. You proceeded thereafter and located on the land?

A. Yes, sir.

Q. Under your location was oil or gas discovered in paying quantities?

A. Yes, sir, gas was discovered prior to the withdrawal order of Mr. Taft.

Q. Gas was discovered before the withdrawal order of Mr. Taft?

A. Yes, sir.

Q. Who drilled the well?

A. The Producers Oil Company.

Q. Under what kind of an arrangement?

A. I was to receive a certain per centage of the production.

Q. Under a sale or a lease?

A. Lease.

Q. You leased your rights as Locator to the Producers Oil Company?

A. Yes, sir.

Q. The Producers Oil Company produced gas in paying quantities before the Taft withdrawal order?

A. Yes, sir.

On Cross Examination he said:

By Mr. Hunter:

Q. Referring to the well which you say produced gas, that was drilled after the date of your location, March, 1910?

A. Yes, sir, drilled April 10th, I think.

Q. It was not drilled before the withdrawal order of 1908?

A. No, sir.

Q. There had been no development of any kind before that time?

A. No, sir.

Q. You knew of the existence of the withdrawal order of December 15th, 1908, referred to by you in your testimony as the Roosevelt withdrawal order?

A. Yes, sir.

Q. You stated that you consulted Mr. Herold in regard to that?

A. Yes, sir.

Q. What was the principal reason assigned by Mr. Herold, as to the alleged illegality of the order?

A. He did not think that the withdrawal order of Mr. Roosevelt had any legal sanction, had no Congressional authority, and furthermore the withdrawal order merely withdrew from Homestead Entry would not
92 effect mineral locations.

Q. Have you read the withdrawal order of December 15th, 1908?

A. I do not recall it, but I did have it.

Q. Now referring to the gas well that you mention, I will ask you to state whether or not any gas was produced and sold from that well?

A. That I could not say.

Q. You do not know about that?

A. No, sir.

Q. All you know is that there was a gas well there?

A. Yes, sir, came in as a blow out.

Q. Mr. Hunsicker, I will ask you to state whether or not you have the original of a letter, of which I now show you a copy of date June 1st, 1911, signed by S. B. Proist, Assistant Commissioner of the General Land Office, addressed to Hon. Murphy J. Foster?

A. I think so.

Q. Will you please read the letter and state whether that is a copy of the original?

(Witness examines same.)

A. Yes, sir, and that was in answer to a telegram addressed to Sen. Foster by me in reference to the discovery of the well.

Q. The letter I show you is marked on the Bank Plaintiff "A"?

A. Yes, sir.

Q. You identify that as a correct copy of the original?

A. Yes, sir, that was written after the well was drilled.

Counsel for Plaintiff, at this time and in connection with the Cross Examination of the witness offers the letter referred to in Evidence.

Filed in Evidence and marked Exhibit "A."

Q. When was work on the first well begun?

A. As well as I recall it was in April.

Q. April?

A. Yes, sir.

Q. 1910?

A. Yes, sir, shortly after the location.

93 Q. I will ask you to state whether or not the first well drilled was abandoned and the pipe withdrawn?

A. No, sir, was a blow out and was never able to kill it.

Q. What became of the pipe that was in there?

A. Still in there, about fifteen hundred feet of drill stem blew out and eighteen hundred feet lost, and the last I heard of it there was about a thousand feet of the drill stem still in that hole.

Q. Were other wells drilled on the land involved in this suit?

A. Yes, sir, I think two more.

Q. Do you remember when they were drilled?

A. Shortly afterwards, I do not recall the date.

Q. You do not remember the date?

A. No, sir.

Q. The wells referred to are known as Hunsicker Nos. 1 and 2?

A. Yes, sir.

Q. They are situated on the land on which you made your mineral location?

A. Yes, sir.

C. P. CLAYTON, a witness for the Defendant being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Storey:

Q. Mr. Clayton, what is your business?

A. I am General Superintendent of The Texas Company?

Q. Did you have charge of the drilling of Wells Nos. 1 and 2 on the Hunsicker land, that is in controversy in this case?

A. Number One was commenced May 8th, 1910, and I did not take charge of this District until July, 1910, but we did not complete this well until along sometime in March, 1911, so from July on I had charge of the well.

Q. What became of that well, was it a producer?

A. No, sir, gas well, and we tried to kill it?

Q. Did it show any gas?

A. Yes, sir, very heavy gas pressure.

94 Q. Now when was No. 2 started?

A. We started to work on Number Two March 19th, and started drilling April 1st, 1911, and it was completed May 20th, 1911.

Q. That well was a producer?

A. It was a Producer to start, produced Two hundred barrels.

Q. Is it producing anything now?

A. I think not.

Q. Can you state if there was a gas showing in Number One, before July 1st, 1910?

A. I could not say positively, only from the reports, the reports showed that they were trying to kill the well July, 1910. I came here on the 8th or 9th, and at that time the well had blowed out, and they were trying to kill it and had been for about a month.

Q. Was the well producing gas then in commercial quantities?

A. Yes, sir.

Q. Killed it and tried to make an oil well?

A. Yes, sir.

Q. But they had actually found gas in paying quantities?

A. Yes sir, the pipe stuck in the well.

Q. Is the pipe in that well, does it still remain in the ground?

A. I am not positive, but I think that it is.

Q. Can you pull that well now?

A. Yes, sir.

Q. What would be the effect?

A. I have an idea that the gas is entirely gone from that part of the Caddo field.

On Cross Examination he said:—

By Mr. Hunter:—

Q. You did not appear until July 1910?

A. Yes sir, I taken charge about the 8th or 9th of July 1910.

Q. You are not familiar, of your own knowledge with the well until that time?

A. No, sir, I was not.

Q. Referring to Well No. 1, was there any gas sold from that well or used?

A. There was gas used for firing the boilers on the Hunsicker lease.

95 Q. No gas sold?

A. Not according to my recollection, in fact the Company tried to kill the well.

Q. Tried to kill the well for the purpose of drilling it deeper for oil?

A. Yes, sir.

Q. Wanted to get oil?

A. Yes, sir.

Q. Did they succeed in killing the well?

A. Finally succeeded in closing it, and used the gas for drilling on the property.

Q. The well has since been abandoned?

A. Yes, sir.

Q. It never did produce oil?

A. No, sir, never produced oil.

On Re-Direct Examination he said:—

By Mr. Storey:—

Q. Your records show when this well commenced as a gaser?

A. I am not positive whether they do or not.

Q. I will ask you to look for the records and have Mr. Adams to come and testify.

On Re-Cross Examination he said:—

By Mr. Hunter:—

Q. I understand you to say Well No. 1 was not completed until July 1911?

A. We done quite a lot of work on it trying to kill it, taken the crew off I think March 8th, 1911. We kept a crew there trying to kill the well, lubricating we called it.

Q. Well No. 2 from which the oil was extracted is situated on the land involved in this suit?

A. Yes, sir, that is my understanding.

96 Evidence on behalf of the Standard Oil Company of Louisiana, one of the co-defendants in suit No. 1158, entitled United States vs. W. W. Green, et al.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 12,584.22 barrels of oil of the value of \$11,042.51, as stated in answer to the nineteenth interrogatory propounded by the plaintiff to this defendant.

This is all of the oil that has been bought or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the interrogatories represents the correct amount taken and the value thereof, and also indicates the payments to the respective parties. The Company still has \$690.10 in its treasury held for the account of W. W. Green, which represents a 1-16 royalty interest in the amount of oil purchased from the property in dispute.

The Standard Oil Company of Louisiana did not operate this property, but bought the oil from the operators and the respective royalty claimants. No oil has been taken from the property by this defendant since the date of the rendition of the statement annexed to the answers to the interrogatories.

Evidence in behalf of the Standard Oil Company of Louisiana one of the co-defendants, in suit No. 1168, United States vs. W. H. Matthews, et als.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 68,592.38 barrels of oil of the value of \$65,786.95, as shown by statement annexed to the answer to interrogatory fifteenth. This statement indicated the number of barrels of oil bought from the property in dispute from the 27th day of February 1912, date of first run, to August 1, 1917. Since that date the Company has taken 2,490.28 barrels of oil of the value of \$4,987.89, as shown by additional statement which is hereto annexed. The total amount
 97 of the oil taken up to April 1, 1918, would represent 71,082.66 barrels, of the value of \$70,-
 774.84. This represents all of the oil that has been bought

or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the answers to the interrogatories was made up to August 1, 1917, and the additions thereto are given so as to include all of the oil run up to April 1, 1918.

The Standard Oil Company of Louisiana did not operate this property but bought the oil from the operators and respective royalty claimants. The statement will show the amount paid both to the operators and to the respective royalty claimants.

The statement referred to is offered in Evidence and marked Defendant Standard Oil Company of La. No. 1.

Evidence on behalf of the Standard Oil Company of Louisiana, one of the co-defendants in suit entitled United States of America vs. Mrs. Lydia Hanszen McMullen, et al, No. 1171.

J. C. Pugh, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 168,066.94 barrels of oil of the value of \$156,251.33, as shown by statement annexed to its answers to interrogatories propounded to it by the plaintiff. Since the rendition of the statement annexed to its answers to the interrogatories, which represents the oil run from February 27, 1912, date of first run, to August 1, 1917, this Company has bought from the same property 4,046.96 barrels of oil of the value of \$8,093.36, as shown by additional statement indicating the oil bought up to April 1, 1918, which is annexed hereto, and is to be considered in ascertaining the number of barrels run from the property and the money value thereof. This represents all of the oil that has been bought from the property in dispute in this case by the

98 Standard Oil Company of Louisiana. The Standard Oil Company of Louisiana did not operate this property but bought the oil from the operators and the respective royalty claimants. The statements will show the amount paid to both the operators and the respective royalty claimants, as well as the amount withheld on account of this litigation.

The account may be restated as follows: Total barrels bought, 172,113.90, of the value of \$164,344.69.

I understand that there were a number of wells drilled on this property and that only two of them are in dispute. The Company took this oil from tanks located on the property, but it has no information as to what particular wells the oil was taken from, but makes the foregoing statement of the total production received by it, leaving the wells from which the oil was taken to be determined between the plaintiff and the operators.

It is admitted by the Government, Plaintiff, that the statement herein made by Judge Pugh, as shown by both the statement rendered and annexed to the interrogatories and the statement attached thereto, represents the correct amount and value of the oil bought by the Standard Oil Company of Louisiana, from the lease from which the oil was taken.

Statement referred to as annexed is offered in Evidence and marked Defendant Standard Oil Co. No. 2.

Defendants rest.

JAMES W. NEAL, being recalled on behalf of Plaintiff in suit of United States vs. Arkansas Natural Gas Company, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Mr. Neal, referring to suit No. 1159 United States vs Arkansas Natural Gas Company, and the statement offered in Evidence and marked exhibit I, I will ask you to state the circumstances under which the statement was prepared, and who assisted you in making the statement?

A. The statement was prepared, as to the production shown on it by the office force and Mr. C. J. Cowles, who has charge of the Office of the Arkansas Natural Gas Company at Little Rock, Arkansas, which is its general office. I interviewed Mr. Cowles in connection with the production in this case and Mr. Cowles stated that the statement which is annexed to the interrogatories in this case were made by him in haste, and that the amount of gas as shown by the Arkansas Natural Gas Company in its answer to the sixth interrogatory 3,855,164.00 cubic feet was the gas sold by the Company for domestic purposes. We checked over the records and found that amount to be correct. We also found that the Company had sold 889,674.00 cubic feet of gas for commercial purposes, that amount was added to the amount of gas showed in the statement annexed to the Sixth interrogatory which totals 4,744,838,000 cubic feet of gas. This gas was sold on a basis of eight ounces. Mr. Cowles also checked over the records of the Company as to the amount of gas purchased by that Company between July 1st, 1911, and June 30th, 1912 and found that 2,395,993,000 cubic feet of gas at ten pounds pressure had been bought, instead of 2,240,990,-

000, cubic feet as shown in the answer to interrogatory No. 6. That amount was entered on the statement. The question of reducing that gas that was bought on the ten ounce basis to the eight ounce basis was considered. The total gas sold by the Company was 4,744,838,000 cubic feet was measured by the eight ounce base and had been subjected to the waste incident to running the gas through the pipe line of the Company from the field to pipe line of the marketing station. Mr. Cowles and myself considered that gas bought at ten pound pressure at the mouth of the well in the field would be equal to the same amount of gas at the marketing station on the eight ounce basis after deducting the waste incident to carrying the gas to the marketing station. We therefore deducted the amount of gas bought by the Company, on the ten pound basis from the total amount of gas sold by the Court, which left 2,348,845,000 cubic feet of gas at the eight ounce pressure as being the production from the five wells which were not metered, but which were run into the pipe line with the gas purchased by the Company, and allowed each well an equal distribution of this gas we found the well in suit should be credited with 469,769,000 cubic feet of gas at 8 ounce basis, concluding that the ten ounce

pressure in the field was equal to the same
 100 amount of gas at the eight ounce pressure at the marketing station we have the same amount of 4,69769,000 cubic feet of gas at the ten pounds pressure at the mouth of the well. This statement is figured exactly as the defendants have figured the production in their answers to the interrogatories, the only difference being the addition of the 889,674,000 cubic feet of commercial gas that was omitted from his statement.

In checking the counter claim we found that the records showed as is shown on page 2, which is copied from the records of the Arkansas Natural Gas Company

as to the cost of drilling and equipping the well was \$1,842.12 instead of the amount shown in the answer to interrogatory No. 11 of the defendant.

Q. Now Mr. Neal, after the answers to the interrogatories were filed, did you go to Little Rock, the home office of the Arkansas Natural Gas Company for the purpose of checking over the records of that Company with regard to the production?

A. Yes, sir.

Q. You had an interview with Mr. Cowles who was in charge of the office?

A. Yes, sir.

Q. Did Mr. Cowles furnish you the data upon which the statement filed in evidence and marked exhibit "I" was based?

A. Mr. Cowles furnished me the information and made the figures and I checked the figures to see that the multiplication and the divisions were correct.

Q. I will ask you to state then whether or not the figures shown on Plaintiff's Exhibit "I" are the figures furnished you by Mr. Cowles which you checked?

A. They are.

Q. Did you and Mr. Cowles agree upon this statement?

A. Yes, sir.

Q. As I understand it the Arkansas Natural Gas Company, in their answer to the interrogatories in this case followed the same general plan of figuring as you followed in this case?

A. Yes, sir, exactly the same plan.

Q. In the answers to the interrogatories, however, no account was made for the commercial gas sold by the Company, was there?

101 A. No, sir.

Q. According to the methods of figuring adopted by the Company what is the difference between the commercial gas sold and the domestic gas sold?

A. The domestic gas is gas that was sold by the Company to private individuals for use in their homes and stores and such things as that, and the Commercial gas is gas that was sold by the Company to Manufacturers. There is a difference in the rates between the commercial gas and the domestic gas, as the commercial gas is sold at ten cents per thousand cubic feet while the domestic gas is sold to the public at Thirty cents to forty cents per thousand cubic feet.

Q. So that the gas taken from this well was transported with gas from other wells by means of the pipe line from the land to Little Rock and other stations along the line?

A. It was.

Q. Did the Arkansas Natural Gas Company sell gas at other points between the field and Little Rock?

A. Yes, sir.

Q. At what other points between the field and Little Rock?

A. Well, the Arkansas Natural Gas Company sold gas at nearly all the small stations along the railroad between the field and Little Rock, also sold gas to Pine Bluff.

Q. It received, according to your examination of the records, ten cents per thousand cubic feet?

Counsel for Defendants objects to any testimony as to the selling price of gas, as irrelevant.

Counsel for Plaintiff states that the evidence adduced relative to the price at which gas was sold by the Arkansas Natural Gas Company, is not for the purpose of vary-

ing, or altering the amount shown by the Statement offered in evidence by Plaintiff and marked exhibit "I".

Q. Now Mr. Neal, referring to your statement marked Plaintiff "I" I will ask you to explain the difference between the gas figured on the ten ounce basis and that figured on the 8 ounce base, and what is meant by those terms.

102 A. It is my understanding that gas on the ten pound basis is equivalent to an increase of practically sixty two and a half per cent when reduced to gas at eight ounce basis. There is a difference in the measurement and in the construction of the meters, but I am not expert along that line of meters.

Q. The gas purchased by the Company in the field was purchased on the land and run through meters at ten pound pressure as I understand it, took that much pressure to the square inch?

A. Yes, sir.

Q. Whereas the gas sold by the Company was sold through meters that took eight ounce pressure to run the meter?

A. Yes, sir, that is my understanding.

Q. Now what are the changes on this statement, making it different from the account made out by the defendant in its answer to the interrogatories?

A. The statement simply adds the value of the commercial gas that was sold by the Company to the amount of domestic gas which is accounted for in the interrogatories. The statement also shows a difference in the cost of drilling and equipping the well which is shown on page two of the statement. Page two is an itemized statement of the cost of drilling and equipping that well in suit as shown by the records of the Arkansas Natural Gas Company.

Q. Mr. Cowles told you that the answers to the interrogatories were hastily prepared?

A. Yes, sir.

Q. Did he furnish you all the figures, both for the production and also on the counter claim?

A. He did.

Q. And he agreed with you upon the statement?

A. Yes, sir, agreed with me as to the statement of production and the amount.

103 I hereby certify that the above and foregoing is a true and correct translation of my Stenographic notes taken on the trial above numbered and entitled causes.

R. B. COOK,
Stenographer.

104 Plaintiff C.

DMG-"FS" 4-207.

"B" Department of the Interior,
CRGO. General Land Office,
Washington, D. C., November 24, 1917.

I hereby certify that the annexed copy of telegram dated December 15, 1908, is a true and literal exemplification from the copy of said telegram on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner
of the General Land Office.

"A"
ECF
ECF

DMG-3C.
Department of the Interior,
General Land Office,
Washington, D. C., December 15, 1908.

Telegram

Copy.

Register and Receiver,
Natchitoches, Louisiana.

Public lands in townships fifteen to twenty-three north,
inclusive, of ranges ten to sixteen West, inclusive, Lou-
isiana Meridian, withdrawn this date by Secretary from
all settlement, entry, and appropriation.

DENNETT,

RPF.

Commissioner.

Official Business—Government Rate.

Filed Feb. 28, 1918.

105

4-207.

DMG-FS
"B"
CRGO.

Department of the Interior,
General Land Office,
Washington, D. C., Nov. 10, 1918.

I hereby certify that the annexed copy of letter dated
December 15, 1908, is a true and literal exemplification
from the press copy on file in this office.

Testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,
(Seal) Acting Assistant Commissioner
of the General Land Office.

5496 Department of the Interior,
A D. General Land Office, dm-g-3fs file.
Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land Office.

Register and Receiver,
Natchitoches,
Louisiana.

See, also 1910-44655.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,
FRED DENNETT,
Commissioner.

Approved:
JAMES RUDOLPH GARFIELD,
Secretary.

LRS.

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Plaintiff D.

DMG-"FS" Department of the Interior,
 "B" General Land Office,
 CRGO. Washington, D. C., December 15, 1908.

I hereby certify that the annexed copy of office letter dated December 15, 1908, is a true and literal exemplification from the press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
 Acting Assistant Commissioner
 of the General Land Office.

"A" Department of the Interior,
 ECF General Land Office,
 ECF Washington, D. C., December 15, 1908.

Register and Receiver,
 Natchitoches, Louisiana.

Sirs:

Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secretary from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal and any applications, selections, or entries based thereupon must be rejected by you subject to appeal.

Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects. You will place such suspended cases in a file in your office, and for the information of this office prepare and forward a schedule thereof with your monthly returns upon Form 4-115.

Very Respectfully,

FRED DENNETT,
Commissioner.

Filed Feb. 28, 1918.

1172

1-480.

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Plaintiff F, 3, 4 & 5.
United States of America,
Department of the Interior,

Washington, D. C., November 16, 1917.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed papers are true and exact copies of the originals as they appear of the records and files of this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

A. G. HOPKINS,

(Seal)

Assistant Secretary of the Interior.

DMG-K 1.

(Stamps) Div'n Mails & Files, received Oct. 26, 1908.
Office of the Secretary, received Oct. 26, 1908.

Department of the Interior.

Division of Mails & Files. Received Nov. 5, 1908, to
Genl. Land Office, Dept. of the Interior.

Department of the Interior.

United States Geological Survey.

Washington, October 24, 1908.

Office of the Director.

The Honorable,

The Secretary of the Interior.

Sir:—

I desire to bring to your attention an extreme case of the waste of mineral resources of the United States, in the hope that the legal officers of the Department may be able to suggest some method of conservation. The Chief Geologist of the Survey, C. W. Hayes, recently visited the Caddo oil field in Louisiana, in company with David

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T. Day, who is in charge of the Survey's investigation into the subject of oil production. The Chief Geologist's report is as follows:

DMG-K 2.

This field is located about twenty-five miles northwest of Shreveport, Louisiana, in Caddo Parish. The field, as at present, outlined by the preliminary well drilling, is very narrow and extends for some ten miles in a northwest and southeast direction. There is every indication of further extension of the field to the north and southeast. In fact, no definite limitations have as yet been determined for the field, and it may be safely assumed from present conditions that it is likely to be of much greater extent.

This field has only lately come into prominence as a producer of petroleum, but for several years has given every evidence of very great natural gas pressure, and several gas wells have been connected by pipe lines, first with Shreveport and later with Texarkana, by six and eight inch pipe lines respectively.

Some four year ago one of the natural gas wells in this field began to leak badly around the casing due to poor work in packing the well above the gas-bearing sand. This leakage rapidly increased so that the well soon "blew out", that is, the pressure of the gas blew the pipe out of the ground and tore away the surrounding earth, and the pipe, derrick, drilling apparatus, etc. all fell into the well and were submerged by water which blew out with the gas. The gas, under heavy pressure, continued blowing out from this well for about four years. It was gradually drowned by salt water, and eventually the escape of gas ceased. This blowing out from indifferent work in packing the wells has been repeated in three other cases, and at the present time the gas is boiling up so rapidly around the casing of a fifth well that another "blow out" can be expected within a short time. In one well a crater about three hundred feet in diameter has

been formed, which is usually about half filled with water or thin mud containing some petroleum. In the middle of this the gas boils up making a large mud volcano, and periodically the entire crater fills with oil and water overflowing into Caddo Lake.

It is absolutely impossible to measure the waste of gas from this well which has been in progress about ten years; but it has been estimated by various persons familiar with gas wells at fifteen million cubic feet in twenty-four hours. Still greater waste of this valuable natural fuel is going on at a dry well about a mile due west of the well noted above. Here the gas is burning with a flame varying from seventy to one hundred feet in height, and the waste is evidently greater than in any other well in the field. In both of these wells enough of the casing remains in place to prevent the caving of the sides which might in time check or entirely stop, the flow of gas. The total waste in this only partially developed field has been estimated as more than one twentieth of the total amount of natural gas usefully consumed in the entire United States.

No effort is being made to control these wells, and there is no record in the history of the United States of such wanton waste with absolutely no effort to check it.

The engineering problem of putting down a series of wells within two hundred feet of these burning wells is extremely simple, and it could be confidently expected that such wells, properly drilled, would draw off the gas and so reduce the pressure until the blown out wells could be controlled and safely filled in. No such attempt is being made because the oil men have the fanciful belief that

after the gas has blown off the production of oil will be improved—an idea for which there is no justification, as this rapid escape of gas rather injures the oil chances of the field by permitting an influx of salt water as the gas pressure is removed. The apparent real reason for this profligate waste is that there is no immediate use for the gas beyond that supplied now for Shreveport and Texarkana, and the sensational exhibition of this burning gas at night is a spectacle which will advertise the field to those passing through on trains.

An investigation of this oil field in cooperation with the Geological Survey of Louisiana is now in progress and additional information concerning it will be available in a short time.

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DMG-K 4.

It has been suggested that if any Federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste. It is evident that engineering difficulties of considerable magnitude are involved, but the geologists of the Survey believe that the operators will be able to control the gas if a serious endeavor is made.

Very respectfully,

GEO. OTIS SMITH,
Director.

D

DMG-K 5.

5496

Department of the Interior,
United States Geological Survey,

Washington, November 6, 1908.

Office of the Director.

The Honorable,
The Secretary of the Interior.

Sir:—

In connection with my letter of October 24 on the subject of the wanton waste of natural gas in the Caddo oil fields in northwestern Louisiana:

I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows:

Township 14 North, Range 10 West:
N $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 14; N $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 34.

Township 15 North, Range 10 West:
Lots 6 and 10 of Sec. 8, area 8.20 acres.

Township 17 North, Range 10 West:
Secs. 26 and 35, in Lake Bisteneau.

Township 18 North, Range 10 West:

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DMG-K 5.

S $\frac{1}{2}$ SE $\frac{1}{2}$, Sec. 26.

Township 19 North, Range 10 West:

W $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 30.

Township 21 North, Range 10 West:

NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 25.

Township 19 North, Range 12 West:

All Sec. 28 except lot in SE $\frac{1}{4}$ SE $\frac{1}{4}$, 30.27 acres, old bed of Lake Bodeau.

Township 15 North, Range 14 West:

NE $\frac{1}{4}$ NW $\frac{1}{4}$. NW $\frac{1}{4}$ NE $\frac{1}{4}$. Sec. 12.

Township 16 North, Range 14 West:

NW $\frac{1}{4}$ NW $\frac{1}{4}$. Sec. 24.

Township 20 North, Range 14 West:

SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 8.

Township 15 North, Range 15 West:

NW $\frac{1}{4}$, Sec. 6.

Township 17 North, Range 15 West:

NW $\frac{1}{4}$ Sec. 5, E $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 6.

Township 18 North, Range 15 West:

E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 14.

Township 19 North, Range 15 West:

NE $\frac{1}{4}$ Sec. 14, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26.

Township 15 North, Range 16 West:

SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 2; W $\frac{1}{2}$ NE $\frac{1}{4}$ & SW $\frac{1}{4}$ Sec. 18;
SW $\frac{1}{4}$ Sec 19.

Township 16 North, Range 16 West:

W $\frac{1}{2}$ NE $\frac{1}{4}$ & SW $\frac{1}{4}$, Sec. 19; NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 24;
W $\frac{1}{2}$ Sec. 30; W $\frac{1}{2}$ Sec. 31.

Township 17 North, Range 16 West:

S $\frac{1}{2}$, Sec. 6; Lot 2 (34.39 acres) Sec. 30.

Township 18 North, Range 16 West:

SW $\frac{1}{4}$, Sec. 6; NW $\frac{1}{4}$, Sec. 7; NW $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$,
SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 13; W $\frac{1}{2}$ SW $\frac{1}{4}$ & SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec.
28; SW $\frac{1}{4}$, Sec. 30; E $\frac{1}{2}$ NW $\frac{1}{4}$ Sec. 36.

Township 19 North, Range 16 West:

SW $\frac{1}{4}$, Sec. 7; SW $\frac{1}{4}$ SE $\frac{1}{4}$ & W $\frac{1}{2}$, Sec. 8; SW $\frac{1}{4}$
Sec. 30.

Township 20 North, Range 16 West:

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DMG-K 7.

NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 1; SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3 (For S $\frac{1}{2}$
SW $\frac{1}{4}$, Sec. 3, see "C", Aug. 24, 1905).

Among these lands, that located at Township 20 North,
Range 16 West, and comprising the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1,
as well as SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3, are clearly within the
known productive area of this oil and gas field. The
waste of natural gas referred to in my previous letter
on this subject constitutes an evident drain upon the
mineral resources of the public domain. If permitted
to continue it will inevitably destroy the mineral value

of this public land, and render it worthless in a comparatively short time.

If the Government, by reason of these holdings, can ask for an injunction against further drilling for oil or gas within the area of the Caddo field until effective measures are taken both to stop the present waste of gas and to insure wells now being drilled against similar "blowing out," I would recommend that this action be taken. Whether such an injunction is not possible, the determination of the conditions necessary for the protection of the Government and other property in this vicinity might well be entrusted to a commission to consist of a member of the Geological Survey, a member of the General Land Office and the State Geologist of Louisiana.

I have the honor to further recommend that all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry.

Very respectfully,

GEO. OTIS SMITH, Director.

Filed Feb. 28, 1918.

B

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Department of the Interior,
United States Geological Survey,
Washington.

July 1, 1910.

Office of the Director.

The Honorable,
The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

ORDER OF WITHDRAWAL.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of withdrawal heretofore made on December 15, 1908, insofar as the same includes any of the lands hereinafter described, be, and the same is hereby ratified, confirmed and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 23, 1910, there is hereby withdrawn from settlement, location, sale or entry, and reserved for classification and

in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth and particularly described as follows, to-wit:

Louisiana Principal Meridian, Louisiana.

- T. 17 N., R. 10 W., all of township.
- T. 18 N., R. 10 W., all of township.
- T. 18 N., Rs. 14 to 16 W.
- T. 19 N., Rs. 14 to 16 W.
- T. 20 N., Rs. 14 to 16 W.
- T. 21 N., Rs. 14 to 16 W.
- T. 22 N., R. 15 W., all of township.
- T. 22 N., R. 16 W., all of township.
- T. 23 N., R. 15 W., all of township.
- T. 23 N., R. 16 W., all of township.

Respectfully,

GEO. OTIS SMITH, Director

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER, Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT, President.

Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,

Acting Secretary.

DMC.

Filed in Evidence Apr 7, 1919.

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No. 1172, PLFF "M."

R. B. Cook, Stenographer.

Suit No. 1172.

U. S. vs. Sam W. Mason, et al.

Statement of the Oil Run by the Gulf Refining Co. of
La. from Land in Suit from May, 1910, to December
31, 1917, Division of Oil and Values.

	Bbls.	Value.
Total oil run to Dec. 31, 1917	94,004.43	\$67,732.94

Division of Oil and Values.

R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen	7,041.08	3,708.30
E. Hanszen	941.87	952.44
D. P. Eubank	1,883.71	1,905.00
Sam W. Mason	1,883.71	1,905.00
R. L. Stringfellow	2,346.74	1,776.54
J. B. Stokley	1,173.34	888.27

Total royalty paid by and due from the Gulf Refining Co. of La. ..	\$11,294.20
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Total value of oil retained by the Gulf Refining Co. of La. as its share from this lease	\$56,438.74
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Pipe Line earnings on oil run	8,367.97
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Total received by the Gulf Refing. Co. of La. for the oil in this suit as its share	\$64,806.71
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Cost of drilling and equipping the well and cost of operating same to Dec. 31, 1917	<u>\$34,067.13</u>
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Net profit to the Gulf Refining Co. of La. to December 31, 1917, all royalty and expenses having been deducted	\$30,739.58
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The first work was done on this lease on April 16, 1910,
the date of the beginning of drilling of the well in the
suit.

Filed Jan. 21, 1919.

115 Gulf Refining Company of Louisiana.

Statement Showing Pipe Line Runs from Mason Mineral
No. 1 from May, 1910, through Dec., 1917.

	Barrels	Price	Amount
1910			
May	750.00	40c.	300.00
June	8,769.04	40	3,507.62
July	5,159.48	38	1,960.60
August	4,309.96	40	1,723.98
September	3,277.11	40	1,310.84
October	3,297.75	40	1,319.10
November	2,735.82	41.34	1,130.99
December	2,526.49	42	1,061.55
	<u>30,826.65</u>		<u>12,314.68</u>
1911			
January	2,054.34	44	903.91
February	1,760.13	44	774.46

March	1,558.95	47.77	744.71
April	1,755.52	50	877.76
May	1,667.37	55	917.05
June	1,638.16	58.24	954.00
July	1,679.54	60	1,007.72
August	1,484.71	60	890.83
September	1,429.78	61.23	875.45
October	1,475.61	62	914.87
November	1,462.83	62	906.95
December	1,280.16	62	793.70
	<hr/>		<hr/>
	19,247.10		10,561.47

1912			
January	1,089.37	66.60	725.52
February	759.34	71.25	541.03
March	375.57	72	270.41
April	715.96	73.52	526.37
May	1,026.68	76	780.28
June	890.77	77	685.89
July	982.21	79	775.95
August	971.96	80	777.57
September	840.77	80	672.62
October	895.00	80	716.00
November	981.05	82.90	813.29
December	942.27	88.58	834.66
	<hr/>		<hr/>
	10,470.95		8,119.59

1913			
January	671.29	93	624.30
February	649.95	98	636.95
March	903.58	98	885.51
April	685.31	98	671.60
May	742.17	98	727.33

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June	849.75	98	832.76
July	876.88	99.57	873.11
August	743.88	1.0253	762.70
September	752.95	1.05	790.60
October	837.41	1.05	879.28
November	738.87	1.05	775.81
December	728.20	1.05	764.61

9,180.24

9,224.56

116 1914
 January

January	537.22	1.05	564.08
February	724.44	1.05	760.66
March	684.01	1.05	718.21
April	737.34	1.05	774.21
May	735.24	1.05	772.00
June	704.93	1.05	740.18
July	615.12	1.00	615.12
August	661.42	85	562.20
September	631.28	80	505.02
October	660.45	80	528.36
November	634.37	80	507.50
December	554.65	80	443.72

7,880.47

7,491.26

1915

January	525.39	80	420.31
February	382.27	70	267.59
March	486.79	66.72	324.79
April	496.30	60	297.78
May	646.14	60	387.68
June	450.64	60	270.38
July	583.85	60	350.31
August	501.66	61.66	308.95

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September	577.66	70.77	408.81
October	537.04	66.67	358.04
November	317.69	89.64	284.78
December	651.03	1.0769	701.09

6,155.86

4,380.51

1916

January	533.89	1.2384	661.17
February	459.96	1.30	597.95
March	479.29	1.4657	702.50
April	319.83	1.55	495.74
May	556.76	1.55	862.98
June	493.33	1.55	764.66
July	490.50	1.5168	743.99
August	491.19	96.55	474.24
September	479.39	90	431.45
October	483.86	90	435.47
November	482.48	90	434.23
December	154.17	1.00	154.17
December	139.38	1.20	167.26
December	165.37	1.40	231.52

5,729.40

7,157.33

1917

January	140.55	1.60	224.88
January	290.31	1.70	493.53
February	505.32	1.70	859.04
March	162.79	1.80	293.02
March	289.68	1.90	550.39
April	437.59	1.90	831.42
May	461.81	1.90	877.44
June	423.93	1.90	805.47

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July	380.62	1.90	723.18
August	170.39	1.90	323.73
August	167.08	2.00	334.16
September	345.73	2.00	691.46
October	334.21	2.00	668.42
November	81.69	2.00	163.28
December	322.06	2.00	644.12

	<u>4,513.76</u>		<u>8,483.54</u>
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Grand Total	94,004.43		<u>67,732.94</u>
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Plus pipage earnings on 20,649.94 bbls. at 5c. per bbl.		1,032.47
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Plus pipage earnings on 73,354.99 bbls. at 10c. per bbl.		<u>7,335.50</u>
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\$76,100.91

117 Statement Showing Cost of Drilling, Equipping
and Operating Mason Mineral No. 1, Caddo
Parish, La., to Dec. 31st, 1917.

Commenced drilling April 16, 1909—Completed June 6,
1909.

Expenditures.

Drilling and Equipping No. 1	10,119.86
Operating Expenses to Dec. 31, 1917	<u>23,947.27</u>

Total Outlay	34,067.13
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Oil Production (Gross)

94,004.43 bbls. at various prices, plus		
pipage	76,100.91	76,100.91
	<hr/>	<hr/>
		42,033.78

Balance Paid Out Dec. 31, 1917.

Total Runs Divided as Follows:

	Barrels	Value.
R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen	7,041.08	3,708.30
E. Hanszen	941.87	952.44
D. P. Eubank	1,883.71	1,905.00
Sam W. Mason	1,883.71	1,905.05
R. L. Stringfellow	2,346.74	1,776.54
J. B. Stokley	1,173.34	888.27
Gulf Refining Company of Louisiana	78,337.35	56,438.74
	<hr/>	<hr/>
	94,004.43	67,732.94

Paid For as Follows:

R. L. Stringfellow and J. B. Stokley	396.63	158.65
Mrs. Lydia H. McMullen	6,718.32	3,304.03
E. Hanszen	619.11	548.17
D. P. Eubank	1,238.26	1,096.51
Sam W. Mason	1,238.26	1,096.51
R. L. Stringfellow	1,916.45	1,237.48
J. B. Stokley	958.19	618.73
Gulf Refining Company of Louisiana	78,337.35	56,438.74
	<hr/>	<hr/>
	91,422.57	64,498.82

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Amounts Held up Account Litigation.

Mrs. Lydia M. McMullen, Trustee	322.75	404.27
E. Hanszen	322.75	404.27
D. P. Eubank	645.45	808.49
Sam W. Mason	645.45	808.49
R. L. Stringfellow	430.30	539.06
J. B. Stokley	215.16	269.54
	<u>2,581.86</u>	<u>3,234.12</u>

Summary.

Amounts Paid for	91,422.57	64,498.82
Amounts in Litigation	2,581.86	3,234.12
	<u>94,004.43</u>	<u>67,732.94</u>

Division of Oil From May, 1910, to December 1, 1911.

Mrs. Lydia H. McMullen, et al ..	3/24
R. L. Stringfellow	1/36
J. B. Stokley	1/72
Gulf Refining Company of Louisiana	5/6

118 Division of Oil from December 1, 1911, to Present Time.

Mrs. Lydia H. McMullen	1/48
E. Hanszen	1/48
Sam W. Mason	1/24

D. P. Eubank	1/24
R. L. Stringfellow	1/36
J. B. Stokley	1/72
Gulf Refining Company of Louisiana	5/6

3-Mar. 21, 1918-5.

119 No. 1154. No. 1156. No. 1159. No. 1167. No.
1168. No. 1170. No. 1171. No. 1172.

To the Honorable Rufus E. Foster United States Judge.
May it please your Honor:

Having completed my investigation and report to you as to class "A" suits, I take up the above suits which have been classed as "B". In class "A" the defendants disputed title in the United States. In these suit defendants admit title in the United States as to the land, but claim under mineral locations. The Government claims these mineral locations, are null because made after the Proclamation of the President of the United States, December 15, 1908 and the withdrawal order of the Government July 2, 1910, and even if the withdrawal order was legal, the said order did not include in its terms any land in Township 20, N. R. 16 West. These issues have already been virtually decided by your Honor on the motion of defendants to dismiss the suits and decide in favor of the plaintiff. Defendants concede (page 2 brief) that your Honor's decision and the decision of the Supreme Court of the United States, in 236 U. S. 456, that for the purpose of hearing before me, the case should be treated for the time being as if the defendants have no title or right in the land, the only question is the extent to which they should be held liable for the oil ex-

tracted. On this point the difference between the Government and the defendants is whether or not the cost of drilling the wells, equipping and operating them should be deducted from the value of the oil.

I am inclined to the opinion that these deductions should be made in the settlement for the following reasons:

"This is a question to be determined by the Federal Courts sitting in Louisiana, according to the law of Louisiana.

Jackson vs. V. S. & T. R. R., 99 U. S. 513 (25 L. Ed. 462 New Orleans vs. Christmas, 131 U. S. 191, 120 (33 L. Ed. 106).

The law of Louisiana is settled that one who in good faith (or even in legal bad faith technically, though in moral good faith) produces oil or gas from the land of another is liable only for the difference between the value of the mineral so produced and the cost of producing it; that is, the cost of drilling, equipping and operating the well, through which such liquid or gaseous minerals are brought to the surface.

"The real value of the gas used by plaintiff is its value in place. But the plaintiff was not the owner of the gas at the time, and the record does not disclose any method by which the value thereof might be arrived at. The only method for measuring such value suggested is to ascertain the value of the gas after it was brought to the surface and reduced to possession and then subtract the cost of reducing to possession."

See Cooke vs Gulf Refining Co. of La. 135 La, 610 and the cases therein cited.

In *Martel vs. Jennings-Heywood Oil Syndicate*, 114 La., 359, the Court held that one who without right and with full knowledge of plaintiff's title drilled on plaintiff's land and produced oil was entitled to reimbursement out of the oil of all the expenses, ordinary and incidental, incurred in producing, transporting and preserving the same; and, if sold, the additional expense of sale, saying:

"The Civil Code declares the 'the fruits produced by the thing belong to the owner though produced by the work and labor of a third person, on the owner's reimbursing such person his expenses'. Article 501. Laurent in discussing Code Napoleon, Article 548, corresponding to Article 501, says:

"This is a principle of equity which will not permit the owner to enrich himself at the expense of another, even though he be in bad faith. This applies to all the expenses to which the possessor has been subjected".

Again in *Voiers vs Atkins*, 113 La., 342, after discussing the rights and liabilities of the mala fide possessor, the Court said:

"The claim for fruits and revenues is nothing more than a claim for indemnity for loss, and naturally may be defeated by proof that, instead of loss, there has been gain."

"The theory is well and fully expounded in the case of *Wilson vs Benjamin*, 25, La., Ann. 588, as follows:

"The claim is one in damages for the wanton detention of property, and, although the trespasser is not al-

lowed to prefer a claim for the enhanced value of the soil attributable to his improvements, yet in the admeasurement of damages to which he is subject the benefit derived from such improvements become an important element. The improvements were worth fully the amount at which the detention of the property might be appraised."

In view of the rather unsettled jurisprudence prior to the decision of the Supreme Court of the United States in 236 U. S. 456, handed down February 23, 1915, I consider the opinion generally held by the Bar and given to defendants by their counsel prior to that decision, operated at least to put the locators in the position of moral good faith.

121 A question is raised by the government in the Norvell case contending that the locators there were mere dummies of the Gulf Refining Co., and that neither they nor the Gulf Refining Co., should be recognized or entitled to any rights even tho the withdrawal proclamation had not issued; that what they did in making the location was a fraud on the Government and in the title of the Statutes of the United States, Sec. 2331. This statute limits the location on mineral lands to 20 acres for each individual. As a matter of fact the location was made by Norvell and seven individuals, but really for the benefit it is claimed of the Gulf Refining Co., Norvell says in his testimony he and his associates acted under the following conditions.

"In answer to the interrogatories B. R. Norvell said that C. H. Markham advised him of the existence of this tract of Government land in Caddo Parish, "that he had been advised that his company could only locate twenty acres; that his company was taking up oil lands in that vicinity, and that if myself and friends would locate a mining claim on the land, his company would

buy or lease it from us". The location was made according to Mr. Norvell, 'with a definite understanding that while it would be our claim and our land, if we secured title, we would sell it or lease it to Mr. Markham's Company. We then went ahead and had Mr. Bell to locate the claim.'"

A contract was made between Norvell and his associates and the Gulf Refining Co., the Company undertaking to develop the land for oil to pay the locators one-half of the oil until the proceeds should amount to \$4000.00. The Gulf Refining Company acted under advice of its general attorney Edward Greer, Esq., who advised as follows:

"Mr. D. Edward Greer answered some of the interrogatories on behalf of the Gulf Refining Co., of La. At and prior to the time the location was made on Dec. 22, 1908, Mr. Greer was the general attorney of the company. He stated in substance:

That the Gulf Refining Co., learned that this land belonged to the Government, and requested Mr. Greer to determine whether or not the United States had title, and if so, to ascertain whether a valid mining location could be made on same. Mr. Greer advised Mr. Markham that the company could take up only twenty acres in one body, but that some reputable lawyers thought a corporation, having more than eight stockholders, would be deemed a mining association, and as such could take up 160 acres. Mr. Markham was advised by Mr. 122 Greer not to attempt to have employees of the Gulf Refining Company make a mineral location, but was told that he (Markham) might give the benefit of his information to his friends in order that they might make a mineral location, and that the

company might then lease the property from the locators. Powers of attorney from the locators were given to W. W. Bell, who had the land surveyed and staked out, and who filed the notices of the mineral location on the records of Caddo Parish.

On the same day the location was made, a contract was entered into between the locators and the Gulf Refining Company, by which the company undertook to develop the land for oil, and to pay the locators one-half of the oil produced until the proceeds should amount to \$4,000.00."

Acting under this, I do not think that the Gulf Refining Company should be too severely punished. I do not think they were wilfull looters of the public domain nor reckless trespassers thereon and should not be mulcted in damages beyond the actual loss to the Government and this loss is estimated at the net value of the oil and gas brought to the surface when it breathed the breath of mercantile values. I think therefore the Norvell case should be treated for this purpose in the same class as the others.

In the case of Norvell, No. 1167, \$41,524.50 was spent by the Gulf Refining Co., in drilling, equipping and operating the wells and only \$14,561.81 worth of oil brought to the surface. Out of this oil the Gulf Refining Co., paid \$4000.00 to the defendants Norvell, Strouck, Weaver, Smilker, Millard, Denman and Blounbatt; for this amount there should be judgment in favor of the United States as follows:

The Gulf Refining Co., and the other defendants (except Blanchett not a party to suit—the rights of the Government to be reserved as against Blanchett) in solido for \$3,500. 00 and:

The Gulf Refining Co., in the further sum of \$500.00 for amount paid by it out of the oil to Blanchett.

I further recommend judgment against all defendants decreeing the mineral locations herein claimed to have been made, to be null and void.

123 In the case 1154, United States vs W. M. Green, et al, I find the total production of oil was in value \$11,042.51. Green made a mineral location on the land April 25, 1910 and leased to the Humphrey Oil & Gas Co., who drilled the well; they operated the well until December 17, 1912, when H. L. Helpen and E. G. Palmer operated till January 6, 1913, then succeeded to the Pierce Oil Co. who operated it till August 1, 1914. This Company asserted a counterclaim for expense of operation, etc., to bring the oil to the surface for \$2,697.80; this amount should be allowed as equitable consideration for reasons given above. The total output of the oil was in value \$11,042.51, all of which was delivered to the Standard Oil Co. of La., who paid out as royalties, the amounts as follows:

Humphrey Oil & Gas Co.	\$5,199.58
Franklin Oil & Fuel Co.	690.03
Pierce Oil Co.	2,986.95
H. L. Haiperin	737.90
Wm. M. Green (Standard Oil is holding this for account of Green)	690.10
E. G. Palmer	737.95

I recommend judgment as follows:

1. Against the Standard Oil Co., of Louisiana for \$5,199.58 being value of production less counterclaim and royalties.

2. Against the Pierce Oil Co., and Standard Oil Co., of La., in solido for \$289.15, being difference between value of production received by Pierce Oil Co., and the counterclaim of that Company.

3. Against each of the above defendants (except Humphrey Oil & Gas Co.) and the Standard Oil Co., of La., in solido in the amount used by them as set out above to-wit:

Franklin Oil & Fuel Co.	\$690.03
H. L. Heilperin	\$737.90
W. M. Green	\$690.10
E. G. Palmer	\$737.95

124 United States vs Henry Hunsicker, et al.

Mineral location made on this tract March 20, 1910 by Hunsicker and C. J. Greene who leased the land to the Producers Oil Co., and operation began before the second withdrawal order but after the first withdrawal. I am inclined to put this case on the question of moral good faith in the same as others, Class "B". The well produced oil valued at \$55,776.89 and the out-put sold to the Texas Company by the Producers Oil Co., who incurred the expense of \$24,414.43 for drilling and administration the well, leaving \$31,362.46 for which judgment should be had against the Producers Oil Co., and Texas Company in solido. In the lease from Hunsicker and Greene they were to receive on a basis which up to January 1st, 1918, had amounted to \$9,294.48 which is being held by the Texas Company for the account of Hunsicker & Greene. There should be judgment for this amount of \$9,294.48 against Henry Hunsicker, Chas. J. Greene, Jr. and the Producers Oil Co., and Texas Company in solido, being the amount of this royalty.

United States vs Arkansas Natural Gas Co. et al.

This well here produced gas valued at \$7,046.54 against which is a counterclaim of the Arkansas Natural Gas Co., for expenses etc., necessary to bring the gas to the surface, amounting to \$4,842.12; the difference between the counterclaim and production is \$2,204.42. The Arkansas Natural Gas Co., paid as royalties as follows:

Sam W. Mason	\$306.25
Wm. L. and H. McMullen	\$612.50
	<hr/>
	\$918.75

The other royalties paid were to

W. H. Matthews	\$175.00
D. P. Eubanks	\$316.25
	<hr/>
	\$491.25

These two parties are not cited and the Government's rights against them should be reserved.

There should be judgment versus Arkansas Natural Gas Company:

125 1. For \$1,285.67, value of production less counterclaim and royalties paid to Mason and W. H. Mullen (against whom the rights of the Government are reserved as above).

2. Against defendants Mason and W. H. McMullen, and Arkansas Natural Gas Co. in solido for \$918.75, amount royalties paid to them by Arkansas Natural Gas Co., altho no counterclaim was pleaded, the evidence on it was admitted without objection and it is better to deal with it now.

United States vs W. H. Matthews, et al.

The mineral location made herein April 24, 1910, and well that produced was drilled, and administered by the Pure Oil Operating Co.

For reasons already given, I think the expenses of drilling and operation should be allowed. I find total amount produced was delivered to two companies, the Gulf Refining Co., oil valued at \$12,572.85 who paid royalties as follows:

Lydia H. McMullen	\$589.35
Sam W. Mason	\$196.45
D. P. Eubanks	\$196.45
F. A. Leonard	\$196.45
W. H. Matthews	\$196.45
H. E. Barns	\$196.45
	<hr/>
	\$1,571.60

The Gulf Refining Company paid the producing Co., Pure Oil Operating Co., 7/8% of the production, i. e., \$11,001.25. Oil was also run from this land by the Standard Oil Co. of La., to value of \$68,544.98, and it paid the following royalties:

L. H. McMullen	3,213.13
F. A. Leonard,	1,071.05
D. P. Eubanks	1,071.99
W. H. Matthews,	1,071.05
Natalie Oil Co.	242.53
H. E. Barns H. L. Heilperin	838.48
Sam W. Mason	1,071.05,
	<hr/>
	\$8,568.28

126 The Standard Oil Co. paid the Pure Oil Operating Co., 7/8ths of the production valued at \$59,976.70. The total amount received by the Pure Oil Operating Co., was \$70,977.95. The total cost of drilling, equipping and operating wells \$59,576.36. Difference between value of oil produced by Pure Oil Co. \$81,117.83 and counterclaim of \$58,976.70, is \$21,541.47.

Having concluded to allow the counter claim for reasons given above:

I recommend judgment in favor of the government for the land in question and give judgment as follows:—

(1). "Against the Pure Oil Operating Co., and the Gulf Refining Company of Louisiana, in solido, and each of the royalty claimants of the latter company, in solido with said companies, for the amounts set opposite their names as aforesaid, aggregating\$1,571.60.

(2). Against the Pure Oil Operating Company and the Standard Oil Co. of Louisiana, in solido, and each of the royalty claimants of the latter company, in solido with said companies, for the amounts set opposite their names, as aforesaid, aggregating\$8,568.28.

(3). Against the Pure Oil Operating Company, the Gulf Refining Company, and the Standard Oil Company of Louisiana, in solido, for value of oil produced, less royalties and counterclaims \$11,401.59

\$21,541.47"

The rights of the Standard Oil Co., whatever they may be, should be reserved against the Gulf Refining Co., and Pure Oil Operating Company and against those to

whom royalties have been paid by it, also the rights of the Gulf Refining Co., should likewise be reserved against the Pure Oil Co., and the parties above to whom royalties were paid.

No. 1170 U. S. vs. Eubanks, et al.

The oil drawn from this land was in value \$4,806.43, plus pipe line earnings \$713.09, totalling \$5,519.52. The well was drilled and operated by the Gulf Refining Company at a cost of \$13,628.94, so no gain was made but a loss entailed. I think, however, judgment should be in solido against Gulf Refining Co., and those who received royalties from the oil drawn from the property, (which I hold defendants had no right or title to) aggregating \$1,001.15, paid to the following parties:

127	J. L. Urquhart	\$200.21
	T. D. Starnes	\$100.12
	Eugene Hanszen	\$ 31.30
	J. B. Files	\$300.00
	D. P. Eubanks	\$369.14
		<hr/>
		\$1,001.15

each of the above to pay the amount actually received by them to the Government, but the Gulf Refining Company being bound for the whole amount. Judgment should go in favor of the Government for the land.

No. 1171 U. S. vs. Lydia H. McMullen

The well was drilled on the premises in suit by the Pure Oil Operating Company under mineral location by defendants Hanszen, Mason, Eubanks, Barns and String-

fellow. The Producing Company sold all the oil to the Gulf Refining Co., and the Standard Oil Co., of Louisiana. The total value of the oil was \$47,770.81.

Amount of drilling and operating \$54,916.70. The Gulf Refining Co. took from the land \$11,688.91 worth of the oil and paid the royalties as follows out of the oil, to-wit:

Lydia H. McMullen	\$365.28
Sam W. Mason	\$182.64
D. P. Eubanks	\$182.64
R. L. Stringfellow	\$365.28
H. E. Barns	\$365.28
	<hr/>
	\$1,461.12

The amount paid by the Gulf Refining Co., to the Pure Oil Operating Company was \$10,227.79.

Amount of oil taken by the Standard Oil Co., from the land was \$36,081.90, and the Standard Oil Co., paid the following royalties:

L. H. McMullen	\$1,127.56
Sam W. Mason	563.78
D. P. Eubanks	563.78
R. L. Stringfellow	1,127.56
Natalie Oil Co.)	
H. E. Barns &)	
H. L. Heilperin)	1,127.56
	<hr/>
	\$4,510.24

Amount paid Pure Oil Co. by Standard Oil Co. of Louisiana. \$31,571.66

Total amount received by Pure Oil Operating Co., by the Standard Oil Co., and Gulf Refining Co., 41,799.46

128 I think for reasons above given that the counterclaim should be allowed, which leaves only the royalties to consider; that recipients of these royalties contributed nothing and received money which should have gone to the true owners, the United States, and I recommend judgment against each of the recipients of the royalties from the Gulf Refining Company in amount set opposite their names, and against the Gulf Refining Company for the whole amount of \$1,461.12 and the recipients to be bound in solido with the Gulf Refining Co., to the extent of payment to each; also judgment against the Standard Oil Co., of La., to the full amount of \$4,510.24, amount handed by it to the above parties as royalties, and against each one receiving royalties to the extent of the amount received by him to be bound in solido with the Standard Oil Co., to said extent. I recommend the right of the Gulf Refining Co., and the Standard Oil Co., of La. to recover from these royalty payees, be reserved.

I recommend the government's title to the land be recognized.

No. 1172, U. S. vs Sam W. Mason, et al

This well was drilled by the Gulf Refining Co., under lease from Sam W. Mason and W. W. Mason who made mineral locations on March 26, 1910.

The well produced in oil values	\$67,732.94
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Cost of drilling and operating which should be allowed	\$34,067.13
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\$33,065.91

Royalties were paid as follows:

R. L. Stringfellow & J. B. Stockley	\$158.65
Mrs. Lydia H. McMullen	3,708.30
Eugene Hanszen	952.44
D. P. Eubank	1,905.00
R. L. Stringfellow	1,776.54
J. B. Stockley	888.27
	<hr/>
	11,294.20

Allowing the counterclaim I recommend judgment against the defendants, decreeing the property to belong to the Government and money judgment as follows:
against Gulf Refining Co. \$33,665.81

Against the Gulf Refining Co. and its several royalty claimants as above in solido with said company for the amounts set opposite their names as above 11,294.20

Total	<hr/>	\$44,960.01
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129 In all of the above cases, in addition to the recommendation heretofore made with respect to the amount the Government should recover, I recommend that the decree grant to plaintiff-further relief in this to-wit:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after Dec. 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral Laws of the United States.

2. That the mineral locations and leases under which the defendants claim, may be declared null and void and

held for naught, in so far as they may include directly, or indirectly, the property in controversy in these suits and to that extent that the said mineral locations and leases be cancelled and annulled.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

3. That said defendants, during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts, as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

Inasmuch as the defendants have accounted for the value of the oil produced up to January 1, 1918, it is prayed:

That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff, of all oil extracted from said lands since January 1, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH
Master in Chancery.

130 Indorsed: Opinion and recommendation of Master in Chancery. E. H. Randolph. Recorded in Chancery. Order Book, Vol. 5 Folio 588, 599. Filed January 11, 1919, 11:25 A. M.

131 In Re Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploita-

tion of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies adjacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be

the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

133 The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good

faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur Oil Company because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly, et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

134 All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15, 1919.

Indorsed:—Opinion. Filed July 17, 1919.

135 In the District Court of the United States for the Western District of Louisiana.

United States of America,

Plaintiff,

vs.

No. 1172 In Equity.

Sam W. Mason, et al,

Defendants.

Now comes Sam W. Mason, R. L. Stringfellow, J. B. Stockley, Mrs. Lydia H. McMullen, E. Hanszen, D. P. Eubank, defendants herein, and except to the report of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception show:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not so withdrawn.

B.

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report

of E. H. Randolph, Esquire, Special Master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1.

That the Master has in said report stated and certified that the lands in question were legally withdrawn from mineral location at the time said locations were made; whereas he should have reported that said lands were not at that date so withdrawn.

2.

That the Master has in said report stated and certified that this defendant should be held solidarily with the parties to whom royalties were paid and delivered, as to the liability which the Master certified as to said royalty owners; whereas the Master should have found if there were any liability as to this defendant, there was none solidary in character between it and its co-defendants.

3.

That the Master has in said report erroneously reported that judgment should be rendered against this defendant in the sum of \$33,665.81; whereas, if the report of the Master were otherwise correct, the Master should have reported and certified that such judgment should not be in excess of \$22,371.61; the Master having erroneously failed to subtract the value of the royalty oil from the net production of the Gulf Refining Company of Louisiana.

4.

That the said Master has in said report certified that this defendant should pay interest upon the amount of

137 judgment rendered against it, at the rate of five (5%) percent per annum from the filing of the report; whereas he should have certified that if any judgment is rendered against this defendant, interest should run only from the date that same is liquidated by decree of this Court.

Wherefore defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
Solicitors for the Gulf Refining
Company of Louisiana.

Indorsed: Exceptions of the Gulf Refining Company of Louisiana to the report of the Special Master. Filed Jan. 30, 1919.

B.

138 In the District Court of the United States for the Western District of Louisiana

United States of America,

v.

No. 1172.

Sam W. Mason, et al.

Now into this honorable Court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counter claim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the above numbered and entitled cause, being plaintiff's exhibits "A" "B" "C" "D" "E" "F-1, 2, 3, 4, 5", "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", (See list of offerings made by plaintiff in note of evidence on hearing of special pleas, Feb. 28, 1918).

This Court held in said cause that the withdrawals included Township 20 N., R. 16 West, and prohibited mineral locations on the public lands described therein, including the property in controversy.

2. The Master's report shows that the well was drilled by the Gulf Refining Company of Louisiana under lease from Sam W. Mason and W. W. Mason, who made a mineral location March 26, 1910. The testimony of Sam W. Mason, one of the mineral locators, taken on the hearing of special pleas, set forth in answer of defendants (pp. 1 to 3 inclusive), shows that no work leading to a discovery on the land embraced in said mineral location was begun until April 16, 1910.

Plaintiff avers that the drilling of said wells and the removal of oil from the said land by the defendants were in violation of the withdrawal order of December 15, 1908.

3. That drilling on withdrawn lands is in contravention of the policy of the United States, as shown by said withdrawals, to retain the oil in the ground for legislative disposition. This policy precludes a consideration of any equitable benefit to the government from the drilling and operating of the wells.

4. That the defendants trespassed upon said land with full knowledge of the withdrawal order of December 15, 1908, (record 36-37). Having taken the oil with full knowledge of the facts, the advice of counsel cannot protect them.

Wherefore, plaintiff prays that these exceptions be sustained and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

(a). Against the Gulf Refining Company of Louisiana for the total value of the production, less royalties paid of \$11,294.20, all as shown by the Master's report, amounting to the sum of \$56,438.74

(b). Against the Gulf Refining Co. of Louisiana and the several royalty claimants of said Company, named in the Master's report, in solido with said Company, for the amounts set opposite their names in said report, all as shown by the Master's report, aggregating

\$11,294.20

\$67,732.94

140 Said sums aggregating \$67,732.94, being total value of the oil extracted and removed by defendants, as shown by the Master's report.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the At-
torney General.

Indorsed: Plaintiff's exceptions to the Master's report. Filed Jan. 30, 1919.
B.

141 In the District Court of the United States for
the Western District of Louisiana Shreve-
port Division.

United States of America,

v.

No. 1172 In Equity.

Sam W. Mason, Mrs. Lydia H. McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. G. Mason, A. A. Mason, A. D. Mason, Gulf Refining Company of Louisiana.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

1. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, the South half ($S\frac{1}{2}$) of the North-east quarter ($NE\frac{1}{4}$) of Section Five (5), Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, the same being now designated as Lots Three and Four (3 and 4) of said Section, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

142 III. That the mineral location made March 26, 1910, recorded March 26, 1910, in Book 59, Page 234, by defendants Sam W. Mason and W. W. Mason, and lease thereof executed by the said Sam W. Mason and W. W. Mason, March, 28, 1910 to the Gulf Refining Company of Louisiana, recorded in Book 59, page 238, said instruments having been recorded on the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same are declared null and void and held for naught insofar as the same may include directly or indirectly the above described property, and, to that extent the said mineral location and lease are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Sam W. Mason, Mrs. Lydia H. McMullen, J. A. McMullen, Eugene Hansen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and the Gulf Refining Company of Louisiana shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or minerals, on or under same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, and the said defendant company is hereby condemned and ordered to pay to plaintiff, the full sum of Thirty-three Thousand Six Hundred Sixty-five and 81/100 (\$33,665.81) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana, Robert L. Stringfellow and J. B. Stockley, in solido; and the said defendants are hereby condemned and
 143 ordered to pay to plaintiff, the full sum of One Hundred and Fifty-eight and 65/100 (\$158.65) Dollars, together with five percent per annum interest thereon from January 11, 1919, until paid.

VIII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Mrs. Lydia H. McMullen, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Three Thousand Seven Hundred and Eight and 30/100 (\$3,708.30) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Eugene Hanszen in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Nine Hundred and Fifty-two and 44/100 (\$952.44) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

X. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Dillard P. Eubank, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand Nine Hundred and Five (\$1,905.00) Dollars together with five per cent per annum interest thereon from January 11, 1919, until paid.

XI. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and Robert L. Stringfellow, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Thousand Seven Hundred and Seventy-six and 54/100 (\$1,776.54) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XII. That the United States of America do have and recover of the Gulf Refining Company of Louisiana and

J. B. Stockley, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Eight Hundred and Eighty-eight
144 and 27/100 (\$888.27) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

XIII. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff, of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

XIV. That the said defendants be, and they are hereby, condemned and ordered to pay all costs of this suit.

XV. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surren-

der and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree, furnish bond, with good and solvent surety to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Ten Thousand (\$10,000) Dollars, which said bond may hereafter be increased, or reduced, as the Court may direct, and shall be conditioned for the faithful performance of

his duties and the rendition by him of a true
 145 and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed August 12, 1919.

146 In the District Court of the United States for
the Western District of Louisiana.

United States of America,
Plaintiff,
vs. No. 1172 In Equity.

Sam W. Mason, Mrs. Lydia Hanszen McMullen, J. A.
McMullen, Eugene Hanszen, Robert L. Stringfellow,
Dillard P. Eubank, J. B. Stockley, C. F. Griggs,
Elizabeth Mason, Margaret Mason, John B. Mason,
W. C. Mason, A. A. Mason, A. D. Mason, Gulf Re-
fining Company of Louisiana,

Defendants.

To the Honorable Judge of the District Court of the
United States for the Western District of Louisiana,
Sitting within and for the Shreveport Division:

The above named defendants, Sam W. Mason, Mrs.
Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hans-
zen, Robert L. Stringfellow, Dillard P. Eubank, J. B.
Stockley, C. F. Griggs, Elizabeth Mason, Margaret Ma-
son, John B. Mason, W. C. Mason, A. A. Mason, A. D.
Mason, and the Gulf Refining Company of Louisiana,
feeling themselves aggrieved by the decree made and
entered in this cause on the 13th day of August, 1919,

do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors, which has been filed, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of them to perfect said appeal be made.

147

J. A. THIGPEN,
S. L. HEROLD, ,
Solicitors for Defendants.

ORDER.

Let the foregoing petition be granted and the appeal allowed which shall operate as a supersedeas upon the defendants giving bond, conditioned as required by law in the sum of Seventy Thousand (\$70,000.00) Dollars.

RUFUS E. FOSTER,
United States District Judge.

Sept. 23rd, 1919.

Indorsed: Petition and order for Appeal. Filed Sep. 23, 1919.
B.

148 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1172, In Equity.
Sam W. Mason, et al., Defendants.

And now, on this the 22nd day of September, 1919, come all the defendants by their solicitors, Thigpen & Herold, and say that the decree entered in the above cause on the 13th day of August, 1919, is erroneous and unjust to the defendants; and for specification of such errors, show :

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including Township 20 North, Range 16 West, wherein the property in controversy is located) was a withdrawal of public lands from location under the mining laws of the United States.

Second.

The Court erred in holding that, at the date of the mineral location in controversy (to-wit, March 26th, 1910) the property in dispute was withdrawn from mineral location.

Third.

The Court erred in holding that the defendants did not have the right to hold, occupy, possess and operate the property in controversy as a placer mining location, free from interference on the part of the United States or any individual.

Fourth.

That the Court erred in awarding judgment for plaintiff for the land.

149

Fifth.

The Court erred in awarding any money judgment against them in favor of plaintiff.

Sixth.

That the Court erred in condemning defendants in solido.

Seventh.

The Court erred in condemning defendants (if it should have given any judgment against them at all, which is denied) in a sum greater than the difference between the value of the oil extracted from the property and the cost, as found by the Master and the Court, of the production of such oil.

Eighth.

The Court erred (even though it might have rendered any judgment against defendants or either of them, which is denied) in not deducting as an expense of operation, from the net amount of oil produced by defendant, Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties.

Ninth.

The Court erred (even had it been justified in awarding any judgment against defendants or either of them,

which is denied), in giving plaintiff a judgment for the amount of royalties paid by the Gulf Refining Company of Louisiana, in addition to the value of all the oil extracted from the property, less cost of production.

Wherefore, the defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendants.

Indorsed:—Assignment of Errors. Filed Sept. 22, 1919.

SUPERSEDEAS BOND ON APPEAL.

150 In the District Court of the United States for
the Western District of Louisiana.

United States of America, Plaintiff,
vs. No. 1172, In Equity.

Sam W. Mason, Mrs. Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, A. A. Mason, W. C. Mason, A. D. Mason, Gulf Refining Company of Louisiana, Defendants.

Know all men by these presents: That we, Sam W. Mason, Mrs Lydia Hanszen McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, A. A. Mason, W. C. Mason, A. D. Mason and

the Gulf Refining Company of Louisiana, as principal, and American Surety Company of N. Y., as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of Seventy Thousand (\$70,000.00) Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our successors and legal representatives firmly and in solido.

Dated at Shreveport, Louisiana, on this the 23rd day of September, 1919.

The condition of the above obligation is such that,

Whereas on the 13th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that Court wherein the United States of America was plaintiff and Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and the Gulf Refining Company of Louisiana were defendants, numbered on the Equity Docket, No. 1172, a decree was rendered, filed, and signed against the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason and the Gulf Refining Company of Louisiana, and the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and the Gulf Refining Company of Louisiana having obtained an appeal with supersedeas

to the United States Circuit Court of Appeals for the Fifth Circuit;

Now if the said Sam W. Mason, Mrs. Lydia Hanszen MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and the Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

SAM W. MASON,

By S. L. HEROLD, Atty.

MRS. LYDIA H. McMULLEN,

By S. L. HEROLD, Atty.

EUGENE HANSZEN,

By S. L. HEROLD, Atty.

ROBERT L. STRINGFELLOW,

By S. L. HEROLD, Atty.

DILLARD P. EUBANKS,

By S. L. HEROLD, Atty.

J. B. STOCKLEY,

By S. L. HEROLD, Atty.

C. F. GRIGGS,

By S. L. HEROLD, Atty.

ELIZABETH MASON,

By S. L. HEROLD, Atty.

MARGARET MASON,

By S. L. HEROLD, Atty.

JOHN B. MASON,

By S. L. HEROLD, Atty.

A. A. MASON,

By S. L. HEROLD, Atty.

W. C. MASON,
 By S. L. HEROLD, Atty.
 A. D. MASON,
 By S. L. HEROLD, Atty.
 GULF REFINING CO., OF LA.,
 By S. L. HEROLD, Atty.
 Principals, Atty.
 (Seal) AMERICAN SURETY CO. OF
 N. Y.,
 By R. L. GAFFNEY, Atty in fact,
 Surety.

Approved:

This 23rd day of September, 1919.

RUFUS E. FOSTER,
 United States District Judge.

Indorsed: Supersedeas Bond. Filed Sept. 23, 1919.

153 In the District Court of the United States for
 the Western District of Louisiana, Shreve-
 port Division.

United States of America,
 vs. - No. 1172, In Equity.
 Sam W. Mason, et al.

To the Honorable, the Judge of the District Court of the
 United States, for the Western District of Louisi-
 ana:

Now into this Honorable Court comes the United States
 of America, plaintiff in the above numbered and entitled
 cause, and with respect represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

ORDER.

The foregoing petition for a cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

154 **ASSIGNMENT OF ERRORS ON PLAINTIFF'S
CROSS APPEAL.**

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1172, In Equity.
Sam W. Mason, et al.

Now comes plaintiff, the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaim of the Gulf Refining Company of Louisiana, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of plaintiff for the total value of said oil.

II.

The Court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by order of the President of the United States, dated December 15, 1908, which order was issued for the purpose of conserving the

public interest and in aid of pending and proposed legislation, and was ratified and continued in full force and effect by another withdrawal order issued by the President of the United States July 2, 1910. The said well was drilled in violation of said order of December 15, 1908, and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III.

The Court further erred in allowing the said counterclaim and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from said land because the said well was drilled by said defendant with full knowledge of said withdrawal order, and it was, therefore, a trespasser in bad faith.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as

shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

156 Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Cross Appeal, Order Thereon and Assignment of Errors. Filed Nov. 12, 1919.
B.

157

	Numbers
United States v. W. W. Green, et al.	1154.
United States v. Henry Hunsicker, et al.	1156.
United States v. Arkansas Natural Gas Company, et al.,	1159.
United States v. B. R. Norvell, et al.	1167.
United States v. W. H. Matthews, et al.	1168.
United States v. D. P. Eubank, et al.	1170.
United States v. Lydia H. McMullen, et al.	1171.
United States v. Sam W Mason, et al.	1172.

The above numbered and entitled causes coming on to be heard on application of the parties for settlement of the records on appeal;

And it appearing to the Court that the said suits, with the exception of the case of the United States v. B. R. Norvell, et al., No. 1167, were consolidated for the purpose of trial, and counsel for plaintiff and defendants having agreed to consolidate all of said causes for the purpose of appeal and to send same up on appeal in one transcript;

And it further appearing to the Court that there is conflict between the praecipe filed by defendants and the praecipe filed by plaintiff with respect to the contents of the record on appeal in the suits that have heretofore been appealed, and all of said cases having now been appealed;

And it further appearing to the Court that the evidence offered in said suits is not voluminous, and that the inclusion of all of said cases in one transcript will avoid duplication of transcripts and will facilitate the hearing of said cases on appeal;

And counsel for all of the parties having consented thereto;

It is ordered that the Clerk of Court shall incorporate all of said cases in one transcript, which shall include the testimony in the exact words of the witnesses and the entire record, with the exception of such portions of said record and exhibits that may, by agreement of counsel, be eliminated.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,

United States Judge.

O.K.

ROBERT A. HUNTER,
HAMPDEN STORY,

By S. L. HEROLD,
S. M. COOK,
J. C. PUGH,

Indorsed: Order Amending Praecipis Filed Jan. 3,
1920.

B

STIPULATION OF COUNSEL.

158 In the United States District Court for the
Western District of Louisiana.

No. 1154, United States v. W. W. Green, et al.

No. 1156, United States v. Henry Hunsicker, et al.

No. 1159, United States v. Arkansas Natural Gas Co.,
et al.

No. 1167, United States v. B. R. Norvell, et al.

No. 1168, United States v. W. H. Matthews, et al.

No. 1170, United States v. D. P. Eubank, et al.

No. 1171, United States v. Lydia H. McMullen, et al.

No. 1172, United States v. Sam W. Mason, et al.

Counsel for plaintiff and defendants in all of the above
suits do hereby enter into the following stipulation in
connection with the order of Court signed January 1, 1920,
which order relates to the contents of the records on ap-
peal in said causes:

Whereas, said order was entered by consent of coun-
sel for the purpose of reducing the size of the respective
transcripts; and,

Whereas, the said order provides, among other things, that all of the causes therein referred to shall be included in one transcript, which counsel have since been advised cannot be done; and,

Whereas, it has been agreed to include in the transcript of appeal in case No. 1172, United States v. Sam W. Mason, et al., certain testimony, exhibits, the Master's report, and the opinion of the Court, which are applicable to all of the suits, and to make said transcript a part of the record on appeal and each of the other cases mentioned:

Now, therefore, it is stipulated that the purpose of said order has been subserved and carried out, and that the transcript prepared in accordance with the stipulation of counsel in the respective suits shall be deemed and construed as having been prepared in full compliance with said order.

It is further agreed that the said order of Court and this stipulation shall be copied into the transcript of appeal in the cause entitled, United States v. Sam W. Mason, et al., No. 1172, and, by reference as aforesaid, shall constitute a part of the record on appeal in each of the above suits.

Thus done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,

Attorney for Plaintiff.

COOKE & COOKE,

HAMPDEN STORY,

J. C. PUGH,

THIGPEN & HEROLD,

J. B. FILES,

Attorneys for all defendants.

Filed May 14, 1920.

159 STIPULATION OF COUNSEL.

in the District Court of the United States for the Western District of Louisiana.

United States of America,

vs.

No. 1172.

Sam W. Mason, et al.

Counsel for plaintiff and defendants do hereby enter into the following stipulation relative to the contents of the record on appeal in the above numbered and entitled cause:

To avoid the inclusion in the transcript of the plats, land office records and other exhibits offered by plaintiff for the purpose of proving its ownership of the land in dispute, and the survey thereof, and as supplementing the admission in the record, it is stipulated that the tract in controversy was embraced in a mineral location filed by defendant, at the date as alleged in the bill of complaint, and that at the time said location was made the said tract was public land of the United States, the defendants claiming under the United States only and through the said mineral location.

It is stipulated that the mineral location and lease set forth in the bill of complaint were made and filed at the time as alleged in said bill.

It is stipulated that Bulletin 623, issued by the Government Printing Office, entitled "Petroleum Withdrawals and Restoration Affecting the Public Domain" shall be sent up to the Court of Appeals in the original.

It is stipulated that the decisions of the Commissioner of the General Land Office of the Secretary of the Interior, in the matter of the homestead entries of John T. Bowman, marked Plaintiff's Exhibits M and N, and William J. Alborty, marked Plaintiff's Exhibits O and P, shall be sent up to the Court of Appeals in the original.

160 The documents sent up in the original, as aforesaid, shall be deemed and considered as part of the transcript herein.

It is stipulated that the Clerk shall prepare the transcript of appeal in this cause and shall copy into and incorporate therein the following, to-wit:

I. Bill of Complaint.

II. Answer of defendants.

III. Plaintiff's Reply to defendants' set-off and counterclaim.

IV. Interrogatories propounded to Gulf Refining Company of Louisiana.

V. Answers of Gulf Refining Company of Louisiana to Interrogatories.

VI. Note of Evidence taken upon hearing of special pleas in this cause.

VII. Order of Court overruling defendants' pleas.

VIII. Order appointing E. H. Randolph as Special Master in Chancery.

IX. Note of evidence taken before the Master in Chancery in this cause and in the suits with which it was consolidated for trial, namely, Nos. 1154, 1156, 1159, 1168, 1170 and 1172, upon the trial of the merits.

X. Telegram from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana, dated December 15, 1908.

XI. Withdrawal order of December 15, 1908, contained in letter of same date from the Commissioner of the General Land Office (approved by the Secretary of the Interior) to the Register and Receiver at Natchitoches, Louisiana.

XII. Letter from the Commissioner of the General Land Office to the Register and Receiver at Natchitoches, Louisiana, dated December 15, 1908.

XIII. Letter from the Director of the Geological Survey to the Secretary of the Interior, dated October 24, 1908.

XIV. Letter from the Director of the Geological Survey to the Secretary of the Interior, dated November 6, 1908.

XV. Withdrawal order of July 2, 1910.

XVI. Pages one and four of statement identified by James W. Neal, Special Agent of the General Land Office, marked plaintiff's exhibit M, showing quantity and value of oil produced, royalties paid and costs of drilling and operating well, together with all other information contained in the said proportions of the statement mentioned.

161 XVII. Report and recommendations of Honorable E. H. Randolph, Master in Chancery, in the suits designated by the said Master as Class "B" cases, being: Nos. 1154, 1156, 1159, 1167, 1168, 1170, 1171, and 1172.

XVIII. Opinion of Court.

XIX. Exceptions of Sam W. Mason, et al.. to Master's Report.

XX. Exceptions of Gulf Refining Company of Louisiana to Master's report.

XXI. Plaintiff's exceptions to Master's report.

XXII. Final decree.

XXIII. Petition of defendants for appeal, order thereon and assignment of errors.

XXIV. Supersedeas bond.

XXV. Plaintiff's petition for cross appeal, order thereon and assignment of errors.

XXVI. This stipulation.

Thus done and signed this 12th day of May, 1920.

ROBERT A. HUNTER,

Attorney for Plaintiff.

THIGPEN & HEROLD,

Attorneys for Defendants.

Filed May 14, 1920.

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CERTIFICATE.

I, W. B. LEE, Clerk of the District Court of the United States for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one-hundred and sixty-one pages contain and form a full, true, correct and complete transcript of the record, assignment of errors and all proceedings had in a cause wherein The United States of America is Plaintiff and Sam W. Mason, et al., are Defendants, No. 1172, In Equity, on the docket of said Court, as fully as the same remains on file and of record in my office at Shreveport, Louisiana—this transcript having been prepared in accordance with stipulation of counsel, a copy of which accompanies this transcript.

Witness my hand officially and the seal of said Court at the City of Shreveport, Louisiana, on the 19 day of May, A. D. 1920.

(Seal)

W. B. LEE, Clerk of the United States District Court, Western District of Louisiana.

Citations omitted from the printed record, being filed in the Original.

• • • • •

And that thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from Minutes of February 24, 1921.

No. 3548.

SAM W. MASON et als.

versus

THE UNITED STATES OF AMERICA, etc.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., Special Assistant to the Attorney General, for appellee and cross-appellant, and S. L. Herold, Esq., for appellants and cross-appellees, was submitted to the Court.

Opinion of the Court.

Filed May 17th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

Appeal and Cross-appeal from the District Court of the United States for the Western District of Louisiana.

S. L. Herold and J. A. Thigpen, (R. L. Batts, D. Edward Greer, Hampden Story, J. A. Thigpen and S. L. Herold on the brief), for Appellants and Cross-Appellees.

Robert A. Hunter, Special Assistant to the Attorney General, for Appellee and Cross-Appellant.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, Circuit Judge:

This was a suit in equity brought by the United States, appellee and cross-appellant, (herein referred to as the plaintiff), against the appellants and cross-appellees, (herein referred to as the defendants). The relief prayed for included the cancellation and annulment of a mineral location made on March 26th, 1910, by the defendants Sam W. Mason and W. W. Mason, covering a described 20 acres in Sec-

tion 5, Township 20, Range 16 West, in Caddo Parish, Louisiana, and of a lease made by said Sam W. Mason and W. W. Mason to the defendant Gulf Refining Company of Louisiana; an adjudication that said land is the property of the plaintiff; the issuance of an injunction; for an accounting by the defendants for oil and gas removed or extracted from said land, and for all moneys, or things of value, derived from the sale or disposition of same, and for all rents, royalties and proceeds arising from the sale or lease of the same, and the recovery by the plaintiff from the defendants of all such sums so received by them, and all damages sustained by the plaintiff in the premises. The court decreed the cancellation of the above mentioned mineral location and lease, that the land mentioned is the property of the plaintiff, and that the defendants pay to the plaintiff the ascertained value of the oil produced from the well bored on the land, less the ascertained drilling and operating costs incurred. The defendants complain of the action of the court in deciding against the validity of the above mentioned mineral location and in not deducting as an expense of operation, from the net amount produced by the defendant Gulf Refining Company of Louisiana, the amounts paid to its co-defendants as royalties. The plaintiff complains of the decree because it was not in its favor for the full value of the oil extracted and removed from the land, without deduction of the amount of costs and expenses incurred in producing that oil.

The plaintiff relied on the following order as having the effect of invalidating the above mentioned mineral location:

"5496.

A. D.

dmg-3fs file.

Department of the Interior,
General Land Office,
Washington, D. C., December 15, 1908.

Address only the Commissioner of the General Land Office.

See also 1910-44655.

Register and Receiver,
Natchitoches,
Louisiana.

SIRS:

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

Respectfully,

FRED DENNETT,
Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

L. R. S."

The defendants admitted that the plaintiff owned the land in question on and before the date of the above set out order, but contend that that order did not have the effect of invalidating the attacked mineral location. That order was "ratified and confirmed and continued in full force and effect" by an order of the President made on the 2nd day of July, 1910, under the authority conferred by the Act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases." (36 St. 847). As the last mentioned order was made after the date of the mineral location in question and after the boring of an oil producing well on the land, the plaintiff must rely on the order of December 15, 1908, to sustain its contention as to the invalidity of the mineral location.

The Director of the United States Geological Survey by several communications addressed to the Secretary of the Interior in October and November, 1908, called attention to waste of natural gas and oil in the Caddo Oil Field, to the fact that lands in, or in the neighborhood of, that field remained in federal ownership, referred to tracts in Township 20 North, Range 16 West as "clearly within the known productive area of this oil and gas field," and recommended that the Government take action to prevent further drilling for oil or gas in that field until effective measures be taken to prevent the waste of gas, and that public lands within and near to that field be withdrawn from entry pending the investigation then under way as to their value for oil and gas. On December 15, 1908, the date of the above set out withdrawal order, the Commissioner of the General Land Office gave notice of the withdrawal to the Register and Receiver at Natchitoches, Louisiana, by a telegram of the body of which the following is a copy:

"Public lands in townships fifteen to twenty-three north, inclusive, of ranges ten to sixteen West, inclusive, Louisiana Meridian, withdrawn this date by Secretary from all settlement, entry, and appropriation."

The Commissioner confirmed his telegram by a letter of the same date which contained the following:

"Confirming my telegram of December 15, 1908, you are advised of the withdrawal on that date by the Secretary from all settlement, entry, and appropriation of the public lands in townships 15 to 23 North, inclusive, of ranges 10 to 16 West, inclusive, Louisiana Meridian. Make proper notations upon your records.

No right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal and any applications, selections, or entries based thereupon must be rejected by you subject to appeal."

The mineral location relied on by the defendants was invalid and conferred no right if it was inconsistent with the terms of the above set out withdrawal order. *United States versus Midwest Oil Company*, 236 U. S. 459; *United States vs. Morrison*, 240 U. S. 192. In behalf of the defendants it is contended that the use in that order of

the words "settlement and entry" was meant to refer to acquisition under the homestead law, as only acquisition under that law requires both settlement and entry, and that the use of the immediately succeeding language, "or other form of appropriation," was meant to cover only forms of appropriation more like the one specifically mentioned than one initiated by a mineral location. Certainly nothing in the order plainly indicates the existence of an intention to exempt from its operation any form of appropriation of public land in the townships named. The words used are consistent with the existence of an intention to cover all forms of appropriation of Government land. A mineral location is the initiation of a method of appropriating public land provided for by law. If it is assumed that the words "settlement and entry" referred only to acquisition under the homestead law, and that the making of a mineral location is to be regarded as the initiation of a form of appropriation of a distinctly different class, nevertheless the rule that where particular words of description are followed by general terms the latter will be regarded as applicable only to persons or things of like class is not to be so applied as to keep the words "other form of appropriation" from embracing one initiated by a mineral location, when to do so gives the order of withdrawal an operation different from that intended and disclosed by the officials who made and approved it. *Danciger vs. Cooley*, 248 U. S. 319. The language of the withdrawal order is to be read with reference to the facts and circumstances connected with the making of it and the evils sought to be remedied, and in the light of the contemporaneous construction of it by the official who made it and who was charged with the duty of enforcing it. 36 Cyc. 1137, et seq. Evidence above referred to makes it plain that the order was intended to prevent the waste of gas and oil from Government land and to keep the lands mentioned from passing from Government ownership pending the investigation then under way as to their value for oil and gas. It is evident that the lands embraced in the order were selected for withdrawal because they were within, or in close proximity to, an area already proved to be productive of oil and gas. As lands valuable for minerals are not subject to homestead entry and are by statute reserved from sale, except as otherwise expressly directed by law (R. S. §§2302, 2318), an order of withdrawal was not needed to keep the land in question from passing from Government ownership in either of the just mentioned modes. The situation dealt with by the order was such as to make it extremely unlikely that the appropriation of that land would be attempted otherwise than under the laws relating to placer mineral claims. U. S. Compiled Statutes, §4638. If the last mentioned mode of appropriation was not interfered with by the order, it was ineffective to prevent the only mode of appropriation likely to be resorted to under the then existing circumstances, and the public lands in the townships named remained as much subject to wasteful exploitation of their oil and gas contents as they were before this order was made. If the order had the meaning attributed to it by counsel for the defendants, its futility as a conservation measure was obvious. The order utterly failed to accomplish the purpose disclosed by the circumstances connected with the making of it if it left the land mentioned subject to mineral

locations. The making of the order is not to be dissociated from the contemporary promulgation of it by the official who made it, the Commissioner of the General Land Office. Those acts were parts of one transaction. That official's telegram and letter of the same date to the Register and Receiver in immediate charge of the enforcement of the order show unequivocally that he construed the order as having the effect of withdrawing the land embraced in it from "all settlement, entry and appropriation," with the result that "no right whatever can be obtained by any location or settlement made, or claim initiated after the withdrawal." The language of the order is not such as to require that it be given a meaning different from that contemporaneously attributed to it by the maker of it, who was the highest officer of the executive department charged with the duty of executing it. That being so, the contention made in behalf of the defendants as to the meaning and effect of the withdrawal order could not be sustained without disregarding considerations which are entitled to persuasive influence in the interpretation or construction of it. For reasons above indicated, we conclude that the withdrawal order of December 15, 1908, was meant to, and did, prevent such a mineral location as the one relied on from conferring any right on anyone claiming under it.

It follows that the defendants were trespassers. And their occupation and use of the Government's land were with full knowledge of the facts which made such occupation and use unlawful. They knew of the existence of the withdrawal order. In their behalf it is contended that, because, after getting a lawyer's advice on the subject, they, in pursuance of the advice given, acted under the influence of mistakes of law as to the validity and meaning of the order, they were entitled, in an accounting with the Government for the value of the oil taken from its land, to be credited with the drilling and operating costs incurred. If the plaintiff had sued at law to recover the damages for which the defendants made themselves liable, the latter's above mentioned mistakes of law would not have stood in the way of the recoverable damages being measured by the value of the oil taken, without credit or deduction for the expenses incurred by the wrongdoers in getting it. *Union Naval Stores Co. v. United States*, 240 U. S. 284. In the case cited the Naval Stores Company was sued for the conversion of spirits of turpentine and rosin produced from gum taken from trees on land embraced in an unperfected homestead entry, and acquired by the defendants from the homesteader with knowledge of the facts which made the turpentine operations on the land unlawful, and after it was informed that when the homesteader turpentine the land he thought there was no law against his doing so. It was decided that the homesteader, having acted with full knowledge of the facts, was not excused by his mistake of law, and that the defendant could take no credit for the work and labor bestowed upon the turpentine by the homesteader, but must answer for its value as manufactured products. The fact that the instant case was brought in a court of equity does not keep the ruling in the cited case from being applicable. It is not disclosed that anything has occurred which, in a court of equity, would deprive the plaintiff of the right to enforce whatever liability the de-

defendants incurred by their wrongdoing. There is nothing to support a claim that it would be inequitable for the plaintiff to get what it would have been entitled to if it had brought an action at law based upon the same wrongful conduct. The damages recoverable at law for such wrongdoing are equally recoverable in a court of equity. *Guffey v. Smith*, 237 U. S. 101, was a suit in equity for an injunction, discovery and accounting, brought by the holder of an oil and gas lease against those who, under color of a later lease made by the owner, took oil and gas from the leased land. Part of the oil was taken while the defendants honestly believed that the lease they held was the only one on the premises, and part was taken after they were fully informed of the prior lease and of the complainant's claim based upon it. On the question of the liability of the defendants for oil taken after they were informed of the prior lease it was decided that they were not entitled to a deduction of the amount of expenses incurred in getting that oil. The following was said in the opinion:

"But the expenses incurred after August 1, 1907, are upon a different footing. On that date Sollers and his associates were actually and fully informed of the prior lease and of the complainant's purpose to insist upon the rights conferred by it and to obtain redress for the invasion of those rights, so that whatever was done thereafter cannot be regarded as anything less than a wilful taking and appropriation of the oil which was subject to the complainant's superior right."

As a trespasser's mistake of law does not, when he is sued at law, have the effect of entitling him to an allowance for the value of his labor expended in committing the trespass, and as the legal rule for measuring damages recoverable from a trespasser prevails in a court of equity in the absence of anything making it inequitable for that rule to be enforced in favor of the party seeking equitable relief, the contention in question cannot be sustained unless that result is required by the circumstance that the defendants acted in reliance on incorrect advice given by a lawyer. The circumstances attending the giving of that advice and the action of the defendants in pursuance of it are to be considered. The unlawful acts of the defendants in appropriating the land in question and taking valuable products therefrom were committed after the highest official of the executive department of the Government charged with the custody and protection of the public lands, acting under an asserted right to do so, and in the belief that the land in question contained valuable oil and gas which should be conserved, had publicly and formally adopted the policy of keeping that land in Government ownership and conserving whatever of value it contained until Congress, after being informed of its value or lack of value for oil and gas, should determine the disposition to be made of it, and, in promulgating the order evidencing the policy adopted, had unequivocally given to that order the meaning, which the language was capable of expressing, of forbidding such an appropriation of that land and its contents as the defendants were guilty of. The trespass complained of was committed after warning given by the owner. The defendants do not

claim that they acted in excusable ignorance of that warning. If they did not actually know that the withdrawal order was intended to prevent any appropriation of the land or its mineral contents it was because they intentionally or negligently failed to inform themselves of what was disclosed by official documents contained in the public files of the local land office. They either knew, or were negligent in not knowing, that the correctness of the legal advice under which they acted was controverted by the highest official representative of the public in the matter of protecting its rights in the land. They were not in the position of one who acts on the faith of legal advice the correctness of which he supposes to be acquiesced in by the party to be adversely affected by conduct in pursuance of it. The evidence is not inconsistent with the conclusion that the advice was sought with the disclosed purpose of finding an excuse for or justification of an already contemplated appropriation of the land in disobedience of the withdrawal order as construed by the official who made it. It was given under conditions conducive to partisan bias and to the vitiating influence of selfish motives. It was acted on with knowledge, or ample opportunity to be informed, of the conflicting views as to the right or lack of right of the defendants to do what they did. It was not unwittingly that they took the chance of their conduct being condemned as wrong and unlawful in the to be anticipated possible event of the legal views expressed by their counsel not prevailing over inconsistent ones known to be entertained by high officials who had no personal interest to be affected. We are not of opinion that, in the determination of the damages for which the defendants are liable because of their unlawful acts, the giving, under the circumstances disclosed, of the advice of counsel in pursuance of which they made mistakes of law which they claim influenced their conduct requires that those mistakes be given an effect or influence not accorded to the mistake of an occupant of public land included in his unperfected homestead entry in making an unlawful use of that land when he thought there was no law against his doing what he did, and, so far as appears, was unaware that anyone thought otherwise, nor to the conduct of the holder of an oil lease in taking oil from the leased land after he was informed that right to that oil was claimed by another under a prior lease made by the owner. We think the evidence adduced required the conclusion that the wrongful acts complained of were committed under such circumstances as forbid their being regarded as anything less than a wilful taking and appropriation of the plaintiff's property, with the result of depriving the wrongdoers of a right to be credited with the amount of expenses they incurred in taking the plaintiff's oil. Such a valid conservation measure as the one in question could not be expected to be at all effective if the erroneous advice of a lawyer as to its validity or meaning is given the effect of enabling a trespasser, with knowledge or ample opportunity to know that the correctness of that advice is officially and publicly controverted, to take and convert the things of value sought to be conserved and to contest the question of his liability without risking anything but the profit he would realize in the event of his being successful in the contest. A reason for the existence of the rule that ignorance of law does not excuse is that a

different rule is incompatible with the regulation of human conduct by law. A mistake of law made under the influence of advice of counsel given and acted on under such circumstances as those disclosed by the evidence in this case is within the reason of the rule mentioned, and is not within any recognized exception to or modification of that rule. To charge the Government with the amount of expenses incurred by trespassers in taking oil from public land validly withdrawn from appropriation is incompatible with the enforcement of the policy evidenced by the withdrawal order. To allow the credit claimed in behalf of the defendants would amount to paying them for doing what was legally forbidden.

A provision of the Louisiana Civil Code and decisions of the Supreme Court of that State are referred to in argument of counsel for the defendants in support of the contention that under the law of that State the defendants, in the circumstances disclosed, are liable only for the difference between the value of the oil produced and the cost of producing it. It is not necessary to determine the import of the State statutes and decisions relied on, as in this suit in equity by the Government for redress for an alleged unlawful appropriation of part of the public domain the relief grantable is not determined by local laws or rules of decision, but by general principles, rules and usages of equity having uniform operation in Federal Courts wherever those courts are sitting as courts of equity. The public domain is not at the mercy of State legislation or decisions. *Utah Power & Light Co. v. United States*, 243 U. S. 389; *Guffey v. Smith*, *supra*.

The amount for which the defendant corporation which got the oil became liable was not lessened by its payment of royalties to other defendants who were liable as co-trespassers. Trespassers cannot, by dividing the fruits of their wrongdoing, convert their joint liability for the whole into a several liability of each of them for only the share or part he got or retained.

It was not error to allow interest from the date of the master's report on the amount he found to be due at that time. Interest from that date was compensation for the withholding of the amount after the date it was found to be due.

For reasons above indicated the decree under review is affirmed in so far as it was in favor of the plaintiff, and is reversed in so far as it credited the defendants or any of them with the drilling and operating costs incurred, and the cause is remanded, with direction that the accounting and the decree be conformed to the views herein expressed.

Affirmed in part.

Reversed in part.

(Original filed May 17th, 1921.)

Judgment.

Extracts from Minutes of May 17th, 1921.

No. 3548.

SAM W. MASON et als.

versus

THE UNITED STATES OF AMERICA, etc.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed in so far as it was in favor of the plaintiff in the said District Court; and that the said decree be, and it is hereby reversed in so far as it credited the defendants in the said District Court, or any of them, with drilling and operating costs incurred; and that this cause be, and it is hereby remanded to the said District Court for further proceedings in conformity to the opinion of this Court.

Petition for Appeal and Order Allowing Same.

Filed June 9th, 1921.

United States Circuit Court of Appeals for the Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The above named appellants and cross appellees, Sam W. Mason, Lydia Hanszen McMullen, J. A. McMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, feeling themselves aggrieved by the opinion and decree herein made and entered in this cause on the 17th day of May, 1921, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herein, and now pray that their said appeal be allowed with super-

seedeas, and that citation issue as provided by law, and that a transcript of the records, proceedings and papers on which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States in the manner provided by law.

And your petitioners pray that the proper order touching the security to be required of them to perfect said appeal be made.

(Signed)

J. A. THIGPEN,

(Signed)

S. L. HEROLD,

Solicitors for said Appellants.

Order.

Let the foregoing petition be granted, and the appeal allowed to operate as a supersedeas, upon the petitioners giving bond, conditioned as required by law, in the sum of One Hundred and One Thousand Dollars (\$101,000.00).

June 7th, 1921.

(Signed)

R. W. WALKER,

Judge U. S. Circuit Court of Appeals.

Assignment of Errors.

Filed June 9th, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON et als., Appellants and Cross-Appellees,

versus

THE UNITED STATES OF AMERICA, Appellee and Cross-Appellant.

And now come all of said appellants and cross appellees (defendants in the District Court), and say that the opinion and decree filed herein on the 17th day of May, 1921, is erroneous and is unjust to them; and, for specification of such errors, they show:

First.

The Court erred in holding that the executive order of December 15th, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second.

The Court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third.

The Court erred in holding defendants to be trespassers.

Fourth.

The Court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth.

The Court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth.

The Court erred in holding that defendants did not act in good faith.

Seventh.

The Court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth.

The Court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the Master and the District Judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth.

The Court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth.

The Court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh.

The Court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth.

The Court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana according to the Code or the settled jurisprudence of that State.

Thirteenth.

The Court erred in not reversing the decree of the District Court which refused to deduct, as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth.

The Court erred in allowing interest from the date of the Master's report.

Wherefore, the defendants pray that the said decree be reversed, and for general relief.

(Signed)

(Signed)

J. A. THIGPEN,
S. L. HEROLD,
Solicitors for Defendants.

Appeal Bond.

Filed June 9th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3548.

SAM W. MASON, LYDIA HANSZEN MACMULLEN, J. A. MACMULLEN, Eugene Hanszen, Robert L. Strongfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, Appellants,

versus

THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, That Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana, as

principal, and American Surety Company, as surety, are held and firmly bound unto and in favor of the United States of America, Appellee, in the above cause, in the full sum of One Hundred and One Thousand (\$101,000.00) Dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at New Orleans, Louisiana, on this the 30th day of May, 1921.

The condition of the above obligation is such that,

Whereas, on the 17th day of May, 1921, in the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in that Court wherein the United States of America was appellee and cross-appellant, and Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana were appellants and cross-appellees, numbered on the Equity Docket 3548, a decree was rendered and signed and filed, affirming the decree of the District Court in so far as it was in favor of the plaintiff below, and reversing same in so far as it credited the defendants below or any of them with drilling and operating costs incurred, and remanding the case with direction that the accounting and the decree be conformed to the views expressed in the opinion handed down on the said 17th day of May, 1921, in said case; and the said Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason, and Gulf Refining Company of Louisiana have obtained an appeal with supersedeas to the United States Supreme Court;

Now if the said Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana shall prosecute such appeal to effect and answer all damages and costs of they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(Signed)

SAM W. MASON,

By S. L. HEROLD, *Atty.*

(Signed)

LYDIA HANSZEN MACMULLEN,

By S. L. HEROLD, *Atty.*

(Signed)

J. A. MACMULLEN,

By S. L. HEROLD, *Atty.*

(Signed)

EUGENE HANSZEN,

By S. L. HEROLD, *Atty.*

(Signed)

ROBERT L. STRINGFELLOW,

By S. L. HEROLD, *Atty.*

(Signed)

DILLARD P. EUBANK,

By S. L. HEROLD, *Atty.*

(Signed) J. B. STOCKLEY,
 By S. L. HEROLD, *Atty.*
 (Signed) C. F. GRIGGS,
 By S. L. HEROLD, *Atty.*
 (Signed) ELIZABETH MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) MARGARET MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) JOHN B. MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) W. C. MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) A. A. MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) A. D. MASON,
 By S. L. HEROLD, *Atty.*
 (Signed) GULF REFINING CO. OF LA.,
 By S. L. HEROLD, *Atty.*
 (Signed) AMERICAN SURETY COMPANY
 OF N. Y.,
 By CHARLES HOFFMAN,
Resident Vice-President.

Attest:

(Signed) C. MURPHY,
 [SEAL.] *Resident Assistant Secretary.*

Approved this 7th day of June, 1921.

(Signed) R. W. WALKER,
United States Circuit Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 205 to 225 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3548, wherein Sam W. Mason and others are appellants and cross-appellees, and The United States of America is appellee and cross-appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 204, are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the Exhibits forwarded to this Court in the original as per the stipulation of counsel copied at page 200 of the record herein, are herewith transmitted in the original to the Supreme Court of the United States.

(In testimony whereof, I hereunto subscribe my name, and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of June, A. D. 1921.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America,
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to — sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Sam W. Mason, Lydia Hanszen MacMullen, J. A. MacMullen, Eugene Hanszen, Robert L. Stringfellow, Dillard P. Eubank, J. B. Stockley, C. F. Griggs, Elizabeth Mason, Margaret Mason, John B. Mason, W. C. Mason, A. A. Mason, A. D. Mason and Gulf Refining Company of Louisiana are appellants and cross-appellees and the United States of America is appellee and cross-appellant, No. 3548 of the Docket of said Circuit Court of Appeals, to show cause, if any there be, why the Decree rendered against the said Sam W. Mason and others, as in said petition and order for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Joseph McKenna, Senior Associate Justice of the United States, this 7th day of June in the year of our Lord one thousand nine hundred and twenty-one.

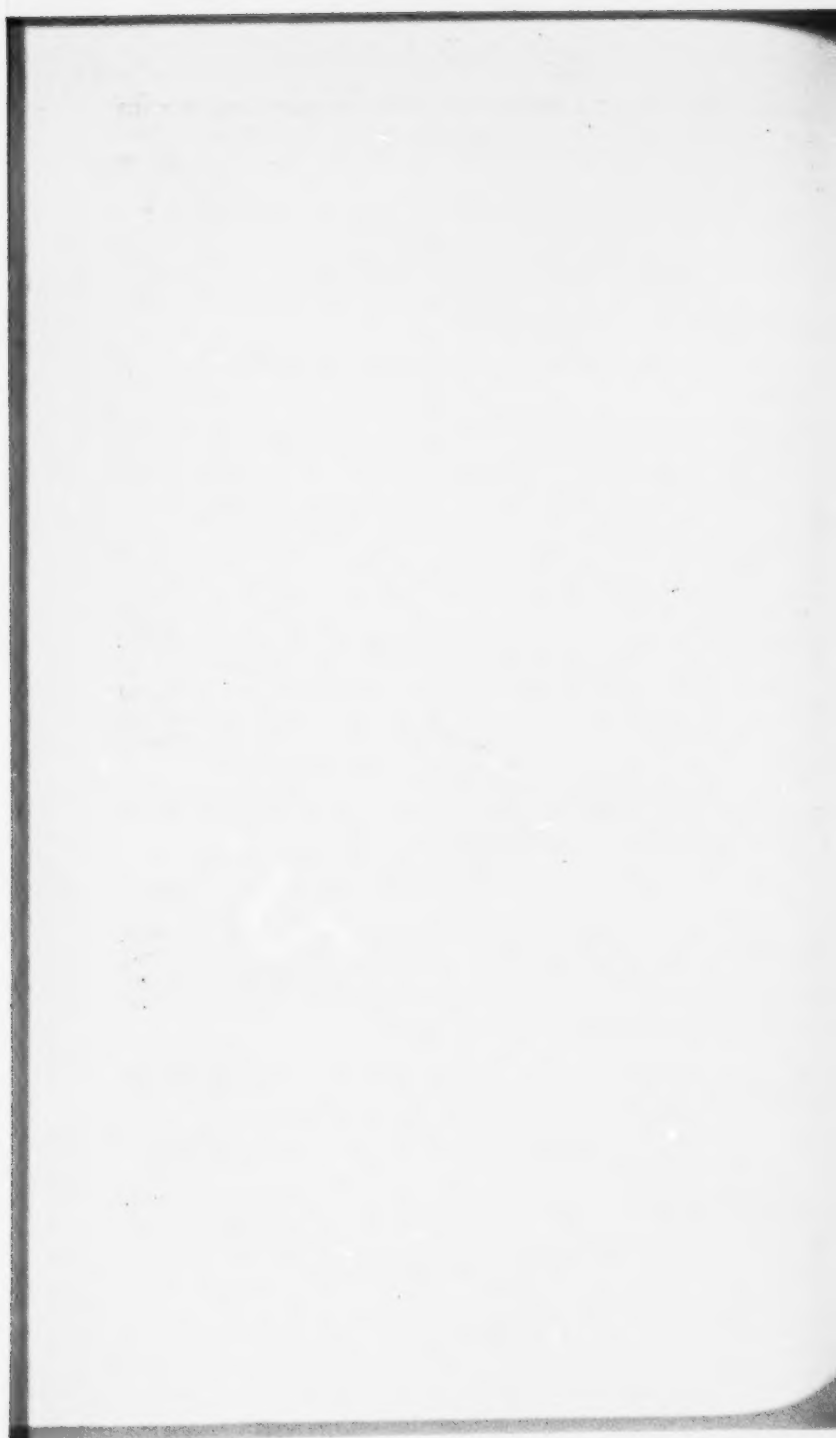
R. W. WALKER,
United States Circuit Judge.

[Endorsed:] No. 3548. United States Circuit Court of Appeals, Fifth Circuit. Sam W. Mason et al., Appellants and Cross-Appellees, vs. The United States of America, Appellee and Cross-Appellant. Citation. Filed 13th day of June, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Service of the within citation of appeal is hereby accepted and acknowledged this 11th day of June, 1921.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Endorsed on cover: File No. 28354. U. S. Circuit Court Appeals, 5th Circuit. Term No. 399. Sam W. Mason, Lydia Hanszen MacMullen, Eugene Hanszen, et al., appellants, vs. The United States of America. Filed July 2d, 1921. File No. 28354.



IN THE
Supreme Court of the United States

OCTOBER TERM 1922.

SAM W. MASON, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 117.
DILLARD P. EUBANK, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
LYDIA H. McMULLEN, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 116.
W. H. MATTHEWS, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
HENRY HUNSICKER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 104.
B. R. NORVELL, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
E. G. PALMER, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 111.
ARKANSAS NATURAL GAS COMPANY <i>vs.</i> UNITED STATES OF AMERICA.		

Appeals from the Circuit Court of Appeals for the Fifth Circuit.

**ORIGINAL BRIEF ON BEHALF OF DEFENDANTS
AND APPELLANTS.**

D. EDW. GREER,
R. L. BATTS,
HAMPDEN STORY,

S. L. HEROLD,
J. A. THIGPEN,
E. P. LEE,
Solicitors for Appellants.



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IN THE
Supreme Court of the United States

OCTOBER TERM 1922.

SAM W. MASON, et al, <i>vs.</i> UNITED STATES OF AMERICA.	}	No. 117.
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W. H. MATTHEWS, et al, <i>vs.</i> UNITED STATES OF AMERICA.		
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ARKANSAS NATURAL GAS COMPANY <i>vs.</i> UNITED STATES OF AMERICA.		
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	}	No. 113.
	}	No. 111.
	}	No. 112.

Appeals from the Circuit Court of Appeals for the Fifth Circuit.

**ORIGINAL BRIEF ON BEHALF OF DEFENDANTS
AND APPELLANTS.**

STATEMENT.

These suits all involve the validity of mineral locations made by the several defendants, the contention of the Government being that such locations were illegal, and that the defendants are liable as trespassers for the value of the oil extracted from the several parcels of land involved in the different suits. This contention is made on the part of the Government, because of the fact that each of such locations was made subsequent to December 15, 1908, on which date an executive order was issued, the effect of which, according to the Government's contention, was to withdraw these lands from location under the placer mining laws.

In each of the cases, it is conceded that on and before the date of the Presidential order referred to, the several tracts affected by the different suits were public lands of the United States, the defendants claiming that the locations made by them under the placer mining laws subsequent to December 15, 1908, were authorized by law and entitled them to drill upon such properties and to extract oil therefrom; and that in making the locations and in drilling for and extracting oil from the properties covered thereby, they acted in good faith, under the advice of competent counsel.

Upon the issues raised by the pleadings, the cases were referred to a master, who, after hearing the testimony, reported to the district judge (Record, No. 117, page 153) his recommendation that the mineral locations be held void, and upon his finding that the defendants had acted in entire good faith, recommended judgment against the various defendants for the value of the oil extracted from the several tracts, less

the cost of production. Other recommendations peculiar to particular cases, will be treated later.

Exceptions (Record, No. 117, pages 173, et seq.) filed by both plaintiff and defendant were overruled by the district judge (Record, No. 117, page 169) who entered a decree (page 179) in accordance with the recommendations of the master.

Appeal was taken from this decree in each case by the defendants therein and cross-appeals by the United States. The Circuit Court of Appeals affirmed the decrees of the district court on the appeals, but on the cross-appeals reversed them, holding the defendants wilful trespassers on the public domain and adjudging them liable for the full value of the oil extracted without allowance for the cost of production. From this decree of the Circuit Court of Appeals, the defendants in each case have prosecuted appeals.

As a matter of convenience to the Court and counsel, these cases will be argued in one brief; the Mason case (No. 117) having been agreed upon as typical of the issues involved, common to the several cases. That is to say, the Mason case will be first discussed in this brief, after which each of the other cases will be considered, without repetition of the arguments made in the Mason case. By so doing, we trust the consideration of the cases will be made less laborious to the court.

The errors assigned by the defendants in the Mason case (those in the other cases being substantially identical) are as follows (Record, page 187);

ASSIGNMENTS OF ERROR.

First. The court erred in holding that the executive order of December 15, 1908, withdrawing from settlement and entry or other form of appropriation the public lands in certain townships (including the township wherein the property in controversy is located) was a withdrawal from location under the placer mining laws.

Second. The court erred in holding that the defendants were not entitled to hold, occupy, possess and operate the property in controversy as a placer mining location with the right to all the oil produced therefrom.

Third. The court erred in holding defendants to be trespassers.

Fourth. The court erred in holding that defendants are liable for the value of the oil extracted from the property.

Fifth. The court erred in holding (after erroneously condemning defendants for the value of the oil taken from the land) that defendants are not entitled to deduct therefrom the amount of expenses actually incurred in producing such oil.

Sixth. The court erred in holding that defendants did not act in good faith.

Seventh. The court erred in holding that defendants' acting upon advice of counsel under the circumstances of this case did not entitle them to allowance for the expenses actually incurred in producing the oil, for the value of which they are here condemned by said judgment.

Eighth. The court erred in reversing, without any evidence to sustain such conclusion, the concurrent findings of the master and the district judge that the advice of counsel, upon which defendants relied in operating the property in controversy, was the opinion generally entertained by the Bar and was given by competent counsel under such circumstances as to have entitled defendants to rely thereon.

Ninth. The court erred in holding that defendants' operations upon the property were wrongful acts, committed under such circumstances as to be regarded as a wilful taking of plaintiff's property.

Tenth. The court erred in refusing to determine the right of the defendants to deductions for the expense actually incurred in producing the oil according to the law of Louisiana.

Eleventh. The court erred in refusing to apply to this case the provisions of Article 501 of the Civil Code of Louisiana and the settled jurisprudence thereunder.

Twelfth. The court erred in holding that the substantial right of defendants to deduct expenses actually incurred by them in the production from land in Louisiana of oil, for the value of which plaintiff is awarded judgment, is not to be determined by the Federal Courts sitting in Louisiana, according to the Code or the settled jurisprudence of that State.

Thirteenth. The court erred in not reversing the decree of the District Court, which refused to deduct as an expense of operation of the Gulf Refining Company of Louisiana, the amount of oil delivered by it to its co-defendants as royalty.

Fourteenth. The court erred in allowing interest from the date of the master's report.

Fifteenth. The court erred in not reversing the judgment of the district court which had condemned defendants *in solido* in a sum greater than the difference between the value of the oil extracted from the property and the actual cost, as found by the master and the district court, of the production of such oil.

ARGUMENT.

On March 26, 1910, Sam W. Mason and W. W. Mason, availing themselves of the provisions of the act of Congress of February 11, 1897, filed a notice of mining location on the 20 acres of land affected by this suit (Record, page 7), and in accordance therewith, took possession of the property and had drilling operations started on April 16, 1910. This well was completed on May 29, 1910, as a producer of oil.

The act of February 11, 1897, above referred to (29 Stat. at Large 526) is as follows:

"That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mining claims."

Section 2329, Revised Statutes provides that:

"Claims, usually called 'placers' * * * shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims.";

with reference to which, Section 2325 of the Revised Statutes provides that location and discovery entitles the locator to a patent to the land after statutory proof, upon payment to the proper officer of five dollars per acre.

These statutes are but detailed expressions of the policy embraced in the act of May 10, 1872, carried into Section 2319 of the Revised Statutes:

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law."

Furthermore, it is settled law that the right acquired by location and discovery, even without patent, is a property right and subject only to the defeasances possible through non-compliance with provisions of the statutes relative to the annual assessment work to be performed by the locator, and is a title even as against the Government.

Union Oil Company v. Smith, 249 U. S. 349, and cases there cited:

"Even without patent, the possessory right of a qualified locator after discovery of minerals upon the claim is a property right in the full sense * * * and it is capable of conveyance, inheritance or devise."

By act of June 25, 1910 (36 Stat. at Large, 847), the President was authorized to

"temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States."

Section 2 of the act contains the following proviso:

"That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a *bona fide* occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this act shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act."

Pursuant to this statutory authority, President Taft, on July 2, 1910, (Record, page 143) withdrew all public lands in the township within which the lands in question are located from "settlement, location, sale or entry."

At this last named date, however, as we have seen, discovery of oil had already been made and oil was being diligently produced therefrom. Therefore, unless some legal impediment existed to the initiation of a valid location at the date at which it was made by the Masons, their location was a valid one, and must be so decreed by this Court.

It is the contention of the Government that this legal impediment did exist, by reason of the issuance on December 15, 1908, of an order (Record, page 132), the effect of which the Government contends was to withdraw the land in question from mineral location.

The first question to be considered, therefore, is whether such withdrawal order had the effect contended for by the Government.

I.

By stipulation (Record, page 200), Bulletin No. 623 of the United States Geological Survey, which was offered in evidence by both parties, entitled "Petroleum Withdrawals and Restorations Affecting the Public Domain," is sent up to this court in the original. In this bulletin, made part of the record in this case, will be found the full history of the order in question. Much of this bulletin is also copied in the transcript.

These official records show that on October 24, 1908, the Director of the Geological Survey addressed a letter to the Secretary of the Interior, in which, after reciting the history of the so-called "wild wells" in Caddo Parish, and after an apparently extravagant statement as to the quantity of gas being wasted, he suggested that for the purpose of conserving such natural resources, the Government should take some action. As a practical means of arriving at the action to be taken by the Government, he suggests "that if any Federal lands remain in this vicinity, there might be some basis for injunction to stop this needless waste." (Bulletin 623, page 113; also Record, pages 135-138).

On November 6, 1908, the Director addressed a second communication to the Secretary of the Interior, referring to his previous letter, and advising that he had caused a search to be made by the General Land Office to determine what lands remained in Federal ownership in the neighborhood of the oil field. In this letter (Bulletin, page 115; Record, page

139), he gives a detailed list of all of the lands apparently remaining in the ownership of the United States within the several townships named in the withdrawal order later issued, and relied on here by the Government.

This list shows that the Government claimed the ownership of only small isolated tracts in the various townships involved. For example, in Township 20 North, Range 16 West, in which the land affected by these suits is situate, there are named (Record, page 140) only two tracts, each of 40 acres, and located in different sections.

The Director continues:

"Among these lands, that located in Township 20 North, Range 16 West, and comprising the N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$, Section 1, as well as S. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$, Section 3, are clearly within the known productive area of this oil and gas field. The waste of natural gas referred to in my previous letter on this subject constitutes an evident drain upon the mineral resources of the public domain. If permitted to continue it will inevitably destroy the mineral value of this public land, and render it worthless in a comparatively short time."

On this account he recommends an injunction against further drilling in the Caddo field until effective measures are taken to stop the waste of gas, etc.

The letter thus concludes:

"I have the honor to further recommend that all the land described herein be withdrawn for entry
PENDING THE INVESTIGATION NOW UNDER
WAY AS TO THEIR VALUE FOR OIL AND

GAS and also that all public lands in Texas within a width of two sections from the Louisiana line opposite the tract between Townships 18 and 20 in Louisiana be similarly withdrawn from entry."

It will also be noted that in each of these townships the government claimed the ownership of only small and isolated tracts and that the Director recognized the fact that the escape of oil or gas from any part of the field would cause drainage throughout the whole field, and that the withdrawal which he recommends is one merely "pending the investigation now under way as to their value for oil and gas."

In response to these letters of the Director, on December 15th, 1908, an executive order of withdrawal was issued (Record, page 132) as follows:

"To secure the public interests, and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from *settlement and entry, or other form of appropriation.*"

Many withdrawal orders had therefore been issued; all of them, in so far as they relate to oil lands, being set out in Bulletin 623. But this court will search the record of these withdrawals in vain to find where, until long after December 15th, 1908, the executive had ever attempted to withdraw oil and gas lands from *location under the placer mining laws*; every such order prior thereto containing specific provision to the effect or otherwise unequivocally indicating the withdrawal to be from agricultural or other similar entry, *for the*

*purpose of protecting the lands from appropriation under any laws other than those governing the location of placer mining claims. Nor was it until the withdrawal order of President Taft of September 27th, 1909, considered in the *Midwest case*, 236 U. S. 467, that the executive ever declared his purpose to withdraw lands from mineral location.*

Since it was not until 1909 that any withdrawal order ever issued purporting to withdraw lands from mineral location, and since every withdrawal prior to the one in controversy specifically withdrew from appropriation only under the *non-mineral* laws, it would seem clear that there is nothing in the government's contention that this withdrawal must *necessarily* be construed to prohibit the making of mining locations; and that such was not its purpose nor scope nor effect clearly follows from settled rules of construction, as well as from its accompanying facts and from the history of the withdrawal itself.

(a) It is settled jurisprudence that none of the provisions of the acts of Congress relative to public lands apply to lands containing minerals; but that such class of lands is treated of under separate statutes and by different rules. Indeed in the arrangement of the Revised Statutes the rules relative to the acquisition of mineral lands are grouped in a chapter entirely separate from those concerning the acquisition of public lands in general.

In United States v. Sweet, 245 U. S. 567:

"In the legislation concerning the public lands it has been the practice of Congress to make a distinction between mineral lands and other lands, to deal with them along different lines, and to withhold mineral lands from disposal save under laws specially

including them. * * * These acts (those relative to mineral lands) were carried into a chapter of the Revised Statutes entitled 'Mineral Lands and Mining Resources.' Taken collectively they constitute a special code upon that subject and show that they are intended not only to establish a particular mode of disposing of mineral lands, but also to except and reserve them from other grants and modes of disposal where there is no express provision for their inclusion."

This case and those therein cited establish that a provision in a statute or in an executive order relative to the disposal of *public lands* refers only to the ordinary forms of disposal; that is, under the non-mineral laws unless there be something in the statute or in the order referring to *mineral lands*, either expressly or by necessary implication.

The same principle must be applied to a withdrawal, particularly since the right of any qualified citizen to appropriate lands under the mineral laws was a statutory right, the power of the executive to interfere with which was at all times a matter of grave doubt, and one which in terms was attempted to be exercised first in 1909, and then by a president who at the time publicly expressed his own doubt as to his power to make such withdrawal.

Certain it is that without clear and unambiguous legal authority the right to acquisition under the mineral laws cannot be denied to any citizen of the United States, in view of the provisions of *Section 2319* of the Revised Statutes:

"All mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are

hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States."

Now let us see whether in the light of the statutes and of the jurisprudence, the withdrawal order is susceptible of the construction sought by the government.

The order does not withdraw from "any appropriation" or from "all forms of appropriation." It specifically withdraws from "*settlement and entry or other form of appropriation.*" "Settlement and entry," however, is a phrase applicable only to acquisition under the laws providing for the obtaining of homes on government land—that is, the homestead and pre-emption laws. A "settlement" is, of course, made by a "settler" by the act of "settling." The word implies the establishment of permanent relations, of fixed conditions, of establishment. See the various dictionaries.

In *Melvin v. United States*, 151 Fed. 177, 80 C. C. A. 545, it was held that under the provisions of the homestead laws and the rules of land office, the term "settlers" could apply only to those "persons who have attached themselves permanently to the soil."

"A settler upon land is one who resides thereon as his home."

Smith v. Florence, 96 S. W. 1096. By the terms "settlement and entry," therefore, the executive must have intended only those modes of initiating title to the land connected with and growing out of actual settlement—that is, entries under

the homestead and preemption laws, the initial step in which is the filing in the proper land office. The word "entry" has a well defined legal signification.

"It means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer known in the legislation of several states by the epithet of an entry-taker, and corresponding very much in his functions with the registers of land offices, under the acts of the United States. In the natural progress of language, the term has been introduced into the laws of the United States; and, by reference to those laws, we think the meaning of the term will be found to be distinctly confined to the appropriation of lands under the laws of the United States at private sale."

Chotard, et al, v. Pope, et al., 12 Wheaton 588. The withdrawal from "settlement and entry," therefore, could have meant only the withdrawal from those methods of acquiring an inceptive right to public lands arising out of the acquiring of a domicile on the land and the filing of the necessary papers in the land office—such, for example as the familiar method of acquisition known as homesteading.

The contention of the Government, therefore, necessarily depends upon the argument that the accompanying words "or other form of appropriation" can be broadened into a term susceptible of such construction as to include "mineral locations."

But, as we have noted, the order does not withdraw from "any appropriation," but from "settlement and entry or other form of appropriation." However broad might have been the

meaning of the word "appropriation" if the withdrawal had been from "*any appropriation*" or from "*all forms of appropriation and entry*," yet when this term is preceded as here by the phrase "*settlement and entry*" and coupled with them by the word "*other*," it must necessarily follow that the meaning of the phrase is limited to those forms of appropriation similar to or growing out of the same general laws as those under which settlement and entry are made. In other words, it must be considered as if it read "*or other similar form of appropriation*" or "*other such like form of appropriation*": that is to say, appropriation through some form of entry under the general land laws.

We have seen that the provisions of the law relative to the acquisition of mineral lands are of a character entirely different from those relative to the acquisition of public lands generally: this difference being emphasized in their being carried into separate chapters of the Revised Statutes. They are different codes of law, governed by different principles, and different terminology is employed for the modes of acquisition under the two systems.

The inception of the right to mineral lands is by "location," whereas under the non-mineral laws it is by "settlement and entry," or "purchase." And "entry," as said in *Chotard v. Pope, Supra*:

"is an act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country by the filing of his claim with the proper officer of the land office."

A location, however, is not an entry, for it in no way depends upon the filing in the land office, nor is the payment

of any fee, nor the making of any purchase incumbent upon the locator to vest in him property rights.

"A location is the act of appropriating a parcel of land according to certain established rules. It usually consists in placing on the ground, in a conspicuous position, a notice setting forth the name of the locator, the fact that it is thus taken or located, with the requisite description of the extent and boundaries of the parcel, according to the local customs, or, since the Statute of 1872, 17 Stat. at L. 91, according to the provisions of that act. * *

* The location, which is the act of taking the parcel of mineral land, in time became among the miners synonymous with the mining claim originally appropriated. So, now, if a miner has only the ground covered by one location, 'his mining claim' and 'location' are identical, and the two designations may be indiscriminately used to denote the same thing."

St. Louis Smelting Company v. Kemp, 104 U. S. 636. Section 2319 extends an express invitation to all qualified persons to explore the lands of the United States for valuable mineral deposits and this and the following sections hold out to one who succeeds in making the discovery the promise of a full reward. Those who, being qualified, proceed in good faith to make such explorations and enter peaceably upon vacant lands of the United States for that purpose, are not treated as mere trespassers, but as licensees or tenants at will. For since, as a practical matter, exploration must precede the discovery of minerals, and some occupation of the land ordinarily is necessary for adequate and systematic exploration, legal recognition of the *pedis possessio* of a *bona fide* and qualified prospector is universally regarded as a

necessity. * * * If he locates, marks and records his claim in accordance with Section 2324 and the pertinent local laws and regulations, *he has, by the terms of Section 2322, an exclusive right of possession to the extent of his claim as located, with the right to extract the minerals even to exhaustion, without paying any royalty to the United States as owner, and without ever applying for a patent or seeking to obtain title to the fee.* * * *

"If not content to rest upon the right conferred by Section 2322, the qualified locator may obtain a patent for his claim by complying with the conditions prescribed by Sections 2325 and 2326.

"But, even without patent, the possessory right of a qualified locator after discovery of minerals upon the claim is a property right in the full sense, unaffected by the fact that the paramount title to the land is in the United States.

Union Oil Company v. Smith, 249 U. S. 337 (349). It is thus apparent that whereas "settlement and entry" implies an entry based upon a permanent settlement, and whereas entry itself depends entirely upon the filing in the proper land office and upon the initiation of contractual relations with the government, the location of a mining claim involves necessarily neither "settlement" nor "entry." For the miner only takes possession of the land for the purpose of working it for its mineral deposits and, rarely if ever, for a home. He need make no entry of any kind, for the statute is a continuous invitation to him to retain possession and to work the property, and the discovery of minerals without any filing in the land office and without any application of any character to the government or its officials vests in him a complete property

right of which he cannot be deprived by the government itself. Consequently, it is the "discovery" that makes the location, and not the "entry." And for this reason the words "other form of appropriation" coupled with the term "settlement and entry" by the conjunctive "or" cannot be construed to cover a withdrawal from mineral location.

In *United States v. Berans*, 3 Wheat. 390, the question at issue was whether a murder committed on a ship of war of the United States was within the jurisdiction of the Federal Court under a statute reading as follows:

"That if any person or persons shall, within any fort, arsenal, dockyard, magazine, or in any other place, or district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of wilful murder, such person or persons, on being thereof convicted, shall suffer death."

Though it was beyond dispute that a ship of war of the United States was "a place within the sole and exclusive jurisdiction of the United States", nevertheless the court held that the crime there committed was not within the purview of the statute. In the opinion by Chief Justice Marshall it was said:

"The objects with which the word 'place' is associated, are all, in their nature, fixed and territorial. A fort, an arsenal, a dock-yard, a magazine, are all of this character. When the sentence proceeds with the words, 'or in any other place or district of country under the sole and exclusive jurisdiction of the United States' the construction seems irresistible that, by the words 'other place', was intended another place of a similar character with those previously enumerated, and with that which follows."

In *United States v. Chase*, 135 U. S. 255, it was held that knowingly to deposit in the mails an obscene letter, enclosed in an envelope or wrapper upon which there was nothing but the name and address of the person to whom the letter was written was not an offense within the act of July 12th, 1876, making it a crime to deposit in the mails "any obscene, lewd or lascivious book, pamphlet, picture, paper, writing, print or other publication of an indecent character, etc."

It was contended on the part of the United States that the term "writing" was comprehensive enough to include the offense charged and also that the words "other publication" was broad enough to cover the offense. But under the rule of construction consistently followed by the Court, as well as under the history of the act, the statute was held not broadened by the use of these terms which referred only to similar documents as those specifically referred to:

In 36 Cyc., page 1120, it is stated:

"The particular words are presumed to describe certain species and the general words to be used for the purpose of including other species of the same genus. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their restricted sense they would have made no mention of the particular classes. The words 'other' or 'any other' following an enumeration of particular classes are therefore to be read as 'other such like' and to include only others of like kind and character."

The application of this rule of construction would seem to settle the case, and it must be applied unless by so doing the

order is given meaning different from that intended by the executive.

"Its proper office is to give effect to the true intention, not to defeat it."

Danciger v. Cooley, 248 U. S. 319. Or, as stated in *United States v. Mescall*, 215 U. S. 31, it is to be applied unless "the particular words exhaust the *genus* so that there is nothing *ejusdem generis* left."

But in this case, as we have seen, there are various forms of appropriation other than those by entry and settlement, falling under the operation of the generalland laws.

But intrinsic evidence in the withdrawal itself, comparison with other withdrawal orders theretofore and thereafter issued, and the reading of it "in the light of public documents embodying the history of the transaction of which the court may take judicial notice" (236 U. S. 485), demonstrate conclusively that the withdrawal order was not intended to have the effect of prohibiting acquisition under the mining laws. And this intention entirely concurs with the construction given to the withdrawal by the application of the rule *ejusdem generis*.

THE PURPOSE OF THE WITHDRAWAL.

(b) The Director of the Geological Survey in his letter to the Secretary of the Interior of date November 6th, 1908, *Bulletin 623*, page 116, recommends:

"That all the lands described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas."



Now why should lands be withdrawn "pending an investigation as to their value for oil and gas?" The answer is obvious that the lands may be classified as "mineral" or "non-mineral." If found to be non-mineral, that no inceptive rights be permitted to attach to the property which might be shown by such later investigation to be mineral lands. This had been the expressed purpose of every similar withdrawal previously issued. *

In the first withdrawal of record (in 1865) the suspension is on account of the fact, as stated by the Commissioner that:

"It is not the policy of the Government to deal with petroleum tracts as ordinary public lands, any more than with auriferous or other mineral or saline lands."

and every withdrawal order found in said Bulletin 623, which bulletin purports to contain all withdrawal orders relative to petroleum ever issued, proceeded substantially from the same policy as that stated in the withdrawal of April 6th, 1901, (Bulletin, page 66):

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- *Withdrawal September 14th, 1908, California, Bulletin, page 110.
 - Withdrawal August 25, 1908, California Bulletin, page 108.
 - Withdrawal July 10, 1908, California Bulletin, pages 107-108.
 - Withdrawal June 17, 1908, California Bulletin, page 105.
 - Withdrawal August 15, 1908, California Bulletin, page 103.
 - Withdrawal June 3, 1907, California Bulletin, page 101.
 - Withdrawal October 21st, 1902, Oregon, Bulletin, page 75.
 - Withdrawal July 21st, 1902, Oregon, Bulletin, page 73.
 - Withdrawal November 13th, 1901, Oregon, Bulletin, page 70.
 - Withdrawal November 8th, 1901, Oregon, Bulletin, page 69.
 - Withdrawal November 4th, 1901, California, Bulletin page 69.
 - Withdrawal October 7, 1901, Oregon, Bulletin, page 67.

"The vacant lands in the following description are *suspended from agricultural entry to permit investigation of their alleged mineral character*; *

a phrase almost identical with that used in the recommendation of the Director in the instant case "that all the land described herein be withdrawn from entry pending the investigation now under way as to their value for oil and gas."

Certainly this is all that the Director of the Geological Survey had in mind and there is no evidence that the President had in view any purpose for his order different than that actuating every previous withdrawal issued from 1865 up to that date.

The first withdrawal order ever issued prohibiting the acquisition of petroleum land under the *mining laws* was that of President Taft, affecting California and Wyoming, September

*Withdrawal May 28th, 1907, California, Bulletin, page 101.

See restorations pages 89 et seq., relating to the previous withdrawals.

Withdrawal of November 17, 1903, Oregon, Bulletin, page 89.

See letter October 13, 1903, Bulletin, page 88.

See letter of Commissioner, August 18, 1903, Bulletin, page 87.

Withdrawal April 1st, 1903, Wyoming, Bulletin, page 83.

Withdrawal March 21, 1903, Wyoming, Bulletin, pages 82 and 83.

Withdrawal March 16, 1903, Wyoming, Bulletin, page 81.

Withdrawal December 30th, 1903, Wyoming, Bulletin, page 77.

Withdrawal September 27th, 1901, Wyoming, Bulletin, page 66.

Withdrawal April 6th, 1901, California, Bulletin, page 65.

Withdrawal March 7, 1900, California, Bulletin, page 64.

Withdrawal December 19th, 1900, California, Bulletin, page 63.

Withdrawal November 10th, 1900, Wyoming, Bulletin, page 63.

Withdrawal September 5th, 1900, California, Bulletin, page 62.

Four withdrawals, California, page 62, February 28th, August 11th, August 11th and August 28th, 1900, respectively.

Withdrawal March 17, 1865, California, page 60.

27th, 1909, and which was the subject of adjudication in the *Midwest* case. The language and history of the withdrawal order in this case are significant. The radical difference between the terms of the withdrawal there issued and the one now before the court deserve pointing out.

Terms of the Withdrawal Order of December 15, 1908.

To conserve the public interest, and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana are, subject to existing valid claims, withdrawn from *settlement and entry, or other form of appropriation.*

Terms of the Withdrawal Order of September 27, 1909.

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of *location, settlement, selection, filing, entry, or disposal under the mineral or non-mineral public land laws.* All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

As to the reasons for and the history of the withdrawal of September 27th, 1909, the court will note from the bulletin of the Geological Survey, pages 133, 134 and 135, as well as from the reading of the decision of the *Midwest* case (236 U. S. 486 *et seq.*) that that particular withdrawal was not made for the purpose of classifying lands but for the purpose of *preserving oil for the navy* and furthermore that the order of the President proceeded under advice from the Acting Secretary of the Interior (Bulletin, page 149), that all "California and Wyoming petroleum withdrawals heretofore made *permit mining locations;*" this advice being in answer to a telegram from Secretary Ballinger asking for the scope of previous withdrawal orders (page 135).

It will also be noted that as late as June 22, 1909, there were withdrawn in California large tracts of land expressly from

agricultural entry because of the fact that the land had been classified as "oil land," (Bulletin, page 132). See also similar withdrawals of date July 26th, 1909, relative to Wyoming, made pursuant to recommendation of the mineral inspector that the land be withdrawn "pending examination and classification as to the mineral character of the lands." (Bulletin, page 132).

The history of this particular withdrawal, therefore, as well the study of all other withdrawals and a comparison of this order with that involved in the *Midwest* case demonstrates that not only can the language of the order not be susceptible of construction as a prohibition of mineral locations, but that the purpose and intention of the executive was solely to prevent the acquisition of rights to mineral lands under the non-mineral laws.

Furthermore from the facts shown by the record it would seem necessarily to follow that the withdrawal order could not have been intended as an inhibition against drilling upon the several tracts belonging to the government included in the order.

As we have before noted, the entire purpose of this withdrawal was to conserve the gas supply of the Caddo field. It originated in the report as to the waste of gas in that field, and the recommendations of the Director of the Geological Survey all proceeded from his desire to assist in the conservation of such natural resources. The Director knew and so states in his letter of November 6th, 1909 (Bulletin, page 115) that the escape of gas in any part of the oil field causes a drainage generally throughout the producing area, and that such waste (from lands in private ownership) if permitted to

continue would "inevitably destroy the mineral value of this public land." In so doing he was but referring to the principle universally recognized by the courts, *Ohio Oil Company v. Indiana*, 177 U. S. 200, that:

"No one owner of the surface of the earth, within the area beneath which the gas and oil move can exercise his right to extract from the common reservoir, in which the supply is held, without to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners."

The Director's recommendations, therefore, proceeded from the idea of conserving the supply of oil and gas supposed to be contained beneath the several tracts of land specifically described in his letter of recommendation.

As before pointed out, the tracts then claimed by the government and specifically described in the Director's letter were isolated tracts, mostly of small acreage themselves; all the land then claimed in Township 20 North, Range 16 West, being two "forties," a mile and a half apart. It was in Township 20 North, Range 16 West, that the waste occurred and it was as to this township in particular that attention was directed.

The Director knew and the Secretary knew that any proprietor of privately owned lands adjacent to these governmentally owned tracts had the right, of which he could not be deprived, of drilling on his own land. Furthermore they knew that such private owner had the right to drill at any

place upon his own land, no matter how close his wells might be placed to the land of the government, and that he might drill as many wells along the boundary line as he might see proper. They also knew that by this process *the private owner could drain the publicly owned tracts of their mineral content and thereby utterly destroy their mineral value.* They also knew that by prohibiting drilling upon these governmentally owned areas of public land they could not be conserving their mineral resources because such prohibition would not prevent the drainage from such land of the oil and gas therein contained through drilling upon adjacent tracts. They also knew that *the only possible manner in which the mineral resources of these isolated areas could be conserved would be by drilling on these tracts themselves* and of securing the oil therefrom before it could be obtained by drainage from adjacent tracts.

How then could it have appealed to anyone's intelligence that prohibition of drilling on these isolated tracts would conserve their mineral resources?

Bear in mind the fact that this withdrawal was not, as in the California and Wyoming cases, for the purpose of preserving the oil in large bodies of land for the use of the navy, but was actuated by two purposes, first, to prevent the initiation of rights to mineral lands under the non-mineral laws; and, second, to conserve the natural resources of Northwest Louisiana and, incidentally, to prevent the waste of the mineral contents of the several tracts of public land remaining.

But the only manner in which the oil and gas properties of the public land might have been conserved without drilling on those

tracts would have been by the prevention of drilling generally throughout the field; and such action was beyond the power of the Federal Government.

This being so, the only way in which the oil and gas could have been put to beneficial use was by subjecting such areas to mineral location and, through such location, securing the drilling upon the land and the extraction of oil therefrom. If they could not be so used, then the tracts in a short time would become worthless, without benefit to anyone but the private owners within the field.

It would seem to jump to the eye, therefore, that the withdrawal could not have been intended to prevent the exercise of the legal right under *Section 2319 of the Revised Statutes* to extract oil from the several small tracts affected by the order.

It is respectfully submitted that, whether tested by settled rules of construction, by the history of the withdrawal, by its declared object and purpose, or by comparison with other withdrawals previously and subsequently issued, the order of December 15th, 1908, could not have been intended to and did not have the effect of preventing the extraction of oil from the several tracts here involved under the provisions of the placer mining laws.

II.

But if the Court should hold that the withdrawal of December 15, 1908, did operate to prevent the acquisition of rights under mineral locations, then the measure of damages recoverable by the Government from the several defendants who have extracted oil from the property in controversy is the value of the oil in place;

that is to say, its value when produced less the entire cost of production.

The District Court adjudged that the several defendants who had produced oil from the tracts involved in these suits were in good faith in their operation of the properties; and, therefore, under the settled rule (*Bolles Wooden Ware Company v. United States*, 106 U. S. 432; *Guffey v. Smith*, 237 U. S. 118; *United States v. St. Anthony Railroad Company*, 192 U. S. 542), held that in the admeasurement of damages recoverable by the Government there was to be deducted from the value of the oil produced the cost of drilling and of operating the wells which produced such oil. This, on the theory that the defendants being in good faith, were liable to damages only for the value of the oil "at the time and at the place" where severed; that is to say, its value in the ground; such value being the cost at the mouth of the well, less the cost of production.

If the defendants were in good faith, such, of course, is the measure of damages under universal jurisprudence.

The Circuit Court of Appeals, however, reversed the concurrent finding of the master and of the district judge, held the defendants wilful trespassers, and hence, under the rule in *Bolles Wooden Ware Company v. United States*, 106 U. S. 432, and the line of decisions following same, liable in damages for the value of the oil after extraction without any allowance for the cost of its production.

CIRCUMSTANCES UNDER WHICH THE LOCATIONS WERE MADE.

There is no conflict whatever as to the facts surrounding the making of the locations in question.

That the lands in controversy were all government lands and free and open to occupancy and exploration and to the extraction of oil and gas, prior to the withdrawal order of December 15, 1908, is admitted.

In the Mason case, No. 117, agreed upon as the typical case, the location in question was made on March 26, 1910 (Record 6 and 36). The drilling operations were begun on April 16, 1910 (Record 37), and the well completed as a producer of oil in paying quantities on May 29, 1910 (Record 37). All the acts, therefore, essential for the perfection of the mineral location were completed prior to the act of June 25, 1910, and to the withdrawal thereunder on July 2, 1910.

Under these circumstances, the only possible bar that might have existed to the appropriation of the land under the Placer Mining Law and to the extraction of oil by virtue of such location, was the effect of the presidential order of December 15, 1908.

Prior, however, to making the location, Mr. Mason was advised by counsel that he had the right to initiate a mineral location on the property, notwithstanding such order, and to complete it by the discovery of oil.

There is absolutely nothing in the record purporting to impugn the truth of Mr. Mason's statement (Record, page 87 and 88) that he was advised by counsel that he had the legal right to make his mining location. Nor is there a scintilla of evidence in the record to impugn the good faith of his counsel who advised him that the President had no authority to withdraw lands from mining location, and that the withdrawal order of December 15, 1908 did not purport to prevent such locations.

But it is a matter of common knowledge that, at that time, in the opinion of the majority of the bar of the United States, the Executive had no authority to withdraw lands from location under the mining laws. It was only in the decision in the *Midwest* case by this court that such authority of the President was maintained, and then not upon any express grant of power but upon the ground of an implied power resulting from a long-continued practice of the executive with the tacit acquiescence of Congress.

As before pointed out, the location was perfected by the discovery of oil in May 1910.

In the *Midwest* case, in which the presidential authority was sustained by this court, the decision of the district judge had been against the existence of power on the part of the President to withdraw public lands from mining location. On the Government's appeal, the Circuit Court of Appeals did not decide the case, but certified it to this court for instructions. It was originally argued before this court in January, 1914; was assigned thereafter for re-argument; was reargued on May 7, 1914, and not decided until February 23, 1915, and then by a divided court, Mr. Justice Day, Mr. Justice McKenna and Mr. Justice Vandevanter dissenting.

Until the rendition of that decision, it may conservatively be said that at least a very large proportion of the bar entertained the opinion that the President did not possess the authority exercised by him and sustained in that case; the distinguished jurist, who then was President, himself doubting his authority in the premises:

"The message of the President of January 15, 1910, indicated that he doubted his authority to make such

withdrawals. In that message * * * he said: *
 * * 'This power has been exercised in the interest
 of the public with the hope that Congress might
 affirm the action of the Executive by laws adapted
 to the new conditions * * * It seems to me
 that it is the duty of Congress now by statute to
 validate the withdrawals that have been made
 * * * and to authorize the Secretary of the
 Interior temporarily to withdraw lands pending sub-
 mission to Congress of recommendations as to legis-
 lation to meet the conditions or emergencies as they
 arise.' " 236 U. S. 507.

And there is no doubt that it was this frankly expressed doubt of Mr. Taft which was the moving cause of the passage of the act of June 25, 1910 under which, for the first time, express authority to withdraw land from appropriation under the mineral laws was conferred upon the President. When the distinguished Executive, the validity of whose withdrawal order was involved in the Midwest case, himself expressed grave doubt as to his power, when the trial courts denied the existence of that power, when its doubt moved the Circuit Court of Appeals to certify the question to this Court, and when after two arguments in this Court the President's authority was sustained by only five of the Justices, and when three of the learned Justices of this Court considered the matter of such import as to necessitate a vigorous dissenting opinion upon their part,—clearly it would be manifest injustice to hold a layman to be a deliberate trespasser when he acted upon the advice given him by reputable counsel that the withdrawal order was invalid.

Advice of that character, concurred in by federal judges, by many distinguished members of the bar, and by three

Justices of this Court, certainly cannot be held, in the absence of testimony to that effect, to have been lightly given or to have been rendered from improper motives; nor can it be taken, because subsequently to be found in conflict with the opinion of the majority of this court, to have been rendered without careful and thoughtful consideration of the questions involved.

(a) *That a layman acting upon such advice of counsel is not a wilful trespasser is settled law.*

"What was done was in the belief by the defendant that the lands were adjacent to the line of the road and that the cutting was legal. It was done upon the advice of counsel and the defendant used ordinary care and prudence in first being advised as to the law upon the facts as they have been agreed upon, and there was no intention on the part of the defendant to violate any law or to do any wrongful act. This, we think, clearly takes the case out of the principle of those above cited, and the measure of damages must, therefore, be the value of the timber at the time and at the place where it was cut." *United States v. St. Anthony Railway Company*, 192. U. S. 542.

In *United States v. McCutchen*, 238 Fed. 593, the Circuit Court of Appeals for the Eighth Circuit, said:

"But there can be no doubt either that in a court of equity at least, the imputation of being wilful trespassers will not be indulged in as against those who are shown to have acted in good faith in reliance upon advice of reputable counsel.

"At the time the transactions complained of were had in this case, the validity of the withdrawal order of September, 1909, had not only not been upheld, but, on the contrary, had been determined by courts

of great respectability to be without force or effect. *The President of the United States, himself a great lawyer, had indicated his doubt as to the power to make the order, and there is small wonder, therefore, that counsel eminent in their profession, should, after mature deliberation, have been led to advise clients that the order, being beyond the scope of executive function, might be disregarded. That it has since been determined beyond the shadow of a doubt, to the satisfaction of all except those who will not see, that it is and was at all times valid and efficacious, does not detract from the proposition that men who in good faith, even though erroneously, labored under the misconception of its invalidity, are not to be punished now for anything more than the actual wrong they may have wrought."*

In United States vs. Midway Northern Oil Company, 232 Fed. 632, the court said:

"It is true the defendants, as laymen, are presumed to have known the law, and that the withdrawal order was valid, although many of the leading members of the California bar, and five of the ten federal judges called upon to consider the question judicially, apparently did not; and even the Executive himself was in doubt as to his authority to make the order. The maxim that every man knows the law applies to defendants, but there is a marked difference between those who recklessly, or with actual intent to rob others, trespass upon their property, and those who, acting upon the advice of counsel, trespass by mistake, with no evil purpose, but with an honest belief that they have a right to do so. 'One who acts in good faith, upon the erroneous advice of reputable counsel upon questions of legal right concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with a wilful intent to

commit a wrongful act because his counsel was mistaken in his view of the law.' *U. S. v. Homestake Mining Co.*, 117 Fed. 481, 54 C. C. A. 303; *U. S. v. St. Anthony Railway Co.*, 192 U. S. 524, 24 Sup. Ct. 333, 48 L. Ed. 548; *U. S. Mullan Fuel Co. (D. C.)* 118 Fed. 663. The defendants were not wilful looters of the public domain, nor reckless trespassers thereon. They acted on the advice of reputable counsel, expended their money and labor in good faith, relying upon a law of the United States and in the honest belief that they were within their rights. They were, of course, trespassers, because they were mistaken but they should not be mulcted in damages beyond the actual loss to the government."

In *United States v. Homestake Mining Company* (C. C. A. 8th Circuit), 117 Fed. 481, the court said:

"One who acts in good faith upon the erroneous advice of reputable counsel upon questions of legal right, concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with a wilful intent to commit a wrongful act because his counsel was mistaken in his views of the law."

Such is also the jurisprudence of Louisiana wherein the land lies and the cases originated;

Cook v. Gulf Refining Company of La., 135 La. 610; *McGee vs. Louisiana Lumber Company*, 123 La. 702; *Beard v. Lufriu* 46 Ann. 882.

The lawyer is not without justification in confining his consideration of the law of the United States to the Constitution and statutes of the United States. All authority that

exists in any officer of the United States comes from these. Certainly if he must go further he is warranted in limiting his investigation to the Constitution and statutes and published reports of the courts. It is conceded that no specific statute gave to the President the authority he exercised in the withdrawal orders. The Constitution contains no specific provisions suggesting the existence of such authority. It is necessary to concede that the law as to the withdrawal is as the court of last resort has declared it. But, on the other hand, it ought to be conceded that there was no promulgation of the law until it was declared by the court in the *Midwest* case. The decision of the court is not based upon any language of any statute, but upon a long series of acts by the Presidents and a long period of inactivity and acquiescence by the Congress. The absence of action by the Congress could have been and was ascertained. It was not reasonably practicable for any one not in the employment of the government to have ascertained all the facts with reference to withdrawals by the Presidents. Not until this *Midwest* case was tried were they developed and it was practicable then to develop them because the attorneys for the government were able to secure the active cooperation of the Department whose action was under inquiry. It would have been practically impossible by an attorney not connected with the government to have ascertained the facts upon which the opinion of the court is based.

As suggested by the court, the matter of government is a practical thing, and it is doubtless the case that the people of the United States have often profited by the indisposition of the Supreme Court to permit absurd and disastrous consequences from an application of principles or propositions which

appear to attorneys to have been established as the law. And doubtless it would not be difficult to see the public benefit subserved by holding valid the withdrawal order involved in the *Midwest* case. But it would appear to be sufficient to secure for the government the benefit to be properly derived from the withdrawal order without in addition taking from the citizen that which could not under any circumstances have accrued from the order. Under the judgment of the Circuit Court of Appeals a benefit is derived from a disregard and violation of the withdrawal order that could never have resulted from obedience to its terms. As a matter of fact, all the oil involved in this case would have been lost to the United States, but for the action of defendant in taking it out before it was secured by adjacent land owners. If the United States had acted as promptly as the defendant all that it could possibly have secured is that which was given by the judgment of the District Court. Assuming the validity of the order, and assuming the correctness of the government's construction of its terms, it is necessary to assume an action by the Department foolishly futile in the accomplishment of the ends supposed to justify the withdrawal.

It is suggested by the Circuit Court of Appeals that the defendants knew of the order and of the claim of the government that the withdrawal was valid. This is not denied. He knew of it just as he knew of the statute that authorized him to do that which he did. But it no more follows that the defendant was not acting in good faith than it follows that every time a federal functionary claims an authority the authority exists. From the beginning of the Government to this time the jurisdiction of this court has been exercised to restrain illegal action by persons claiming to act under the

Constitution and laws of the United States, and a very great part of the time and labor of the court has been taken in determining that powers claimed did not exist. All of the departments of the Government of the United States have limited and defined powers. The theory upon which the Government is based assumes that the constitutional provision or the constitutional statutory provision upon which a power depends must be capable of being pointed out, and that if this can not be done the conclusion is warranted that the power does not exist. It is the duty of every citizen to obey the law. It is just as definite and high a duty to resist the exertion of powers in the name of the Government when the power has not been conferred. A recent example of the dangerous inclination of persons acting in the name of the Government to assume unauthorized power, is furnished by the activities of officers purporting to act under the "Volstead Act," who violated fundamental constitutional rights to enforce the provisions of a police statute. This court, in the resulting conflict between citizens of the United States and officers of the United States, protected the citizens from the officers. Hundreds of similar cases have been determined by the courts. It is to be assumed that in many of these cases the officers were mistaken as to the laws, and acted in good faith, notwithstanding an ultimate decision against them. It should not be assumed that in all cases when citizens have resisted or disregarded acts of officers based upon claims of authority they have acted in bad faith, although an ultimate decision may be rendered against them.

It would doubtless be unwise to abrogate the legal fiction that everybody knows the law. But it is unconscionable to base upon this fiction disastrously punitive and confiscatory

consequences when a citizen exercises a right which appears to be his after getting the advice of competent attorneys licensed by the courts who make every investigation that the circumstances permit and reaches the only conclusion that could be reached upon the facts reasonably capable of development. The conclusion upon which defendant acted was that reached by four of the nine Federal judges who passed upon the *Midwest* case, and at least three of these judges retained the view that the President's action was unauthorized even after reading the very able opinion of the judge who spoke for the majority of the court, and having before them facts which could not have been fully known until they were developed in the submission of the case to the Supreme Court. As suggested it may be unwise to permit the assumption that any one is ignorant except judges of courts that are not courts of last resort, and minority members of these courts of last resort, but it is neither wise nor just to fail to distinguish between the person who wilfully violates the law and one who acting in good faith and under competent advice acts upon a mistaken assumption of his legal rights. It is in fact a distinction which is constantly made in the administration of the law. In the criminal law, the absence of the knowledge of the existence of the law is sometimes held to evidence the lack of criminal intent which is usually essential to crime. In all criminal cases it is a fact proper to be considered in fixing the punishment.

In the instant case the defendant acted in good faith under competent legal advice, given in good faith, under circumstances under which no other advice could reasonably have been given. The District Court so adjudged. There is no controversy as to the facts. The Court of Civil Appeals

apparently assumes that it is bad faith to question of the actions of an official. If defendant acted in good faith he ought not to be visited with punishment that would not be imposed even for the commission of a crime. There is no question that the United States is made completely whole by the judgment of the District Court. Indeed, assuming now the validity of the order, there is no question that the amount of the judgment is just that much more than the government would have received if the withdrawal order had been regarded. It would seem to be sufficient punishment for a valuable service to the Government that the defendant is deprived of all the fruits of his industry, without, in addition, forfeiting this service. If it be conceded that the United States should under no circumstances suffer loss on account of a mistake of law of one of her citizens, she should still not be permitted to profit at the expense of her citizens on account of the obscurity of her laws.

(b) If the court should hold that the advice of counsel given in accord with the views of three of the justices of this court was not sufficient to take the defendant out of the category of a wilful trespasser, with nothing in the record to impugn the good faith of such advice, yet even then the measure of damages could not exceed the value of the oil after deducting the cost of its production.

The property embraced in this case is in Louisiana; the suits were brought in the federal courts in Louisiana.

It has twice been held by this Court that the question of the measure of damages recoverable against a possessor in bad faith is to be determined by the federal court sitting in Louisiana, not according to the rules of common law, or of

general equity jurisprudence, but according to the civil law of Louisiana.

Jackson v. V. S. & P. R. R. Co., 99 U. S. 513;
New Orleans vs. Christmas, 131 U. S. 191.

Under the provisions of the Civil Code of Louisiana, it is settled that one who produces oil or gas from the land of another is liable only for the difference between the value of the mineral so produced and the cost of producing it; that is to say, less the cost of drilling, equipping and operating the wells through which such minerals are brought to the surface.

"The real value of the gas used by the plaintiffs is its value in place. But the plaintiffs was not the owner of the gas at that time, and the record does not disclose any method by which the value thereof might be arrived at. The only method for measuring such value suggested is to ascertain the value of the gas it has brought to the surface and reduced to possession, and then subtract the cost of reducing to possession."

See *Cooke v. Gulf Refining Company of Louisiana*, 135 La. 610; and the cases therein cited.

In *Martel v. Jennings-Heywood Oil Syndicate*, 114 La. 359, the court held that one who *without right and with full knowledge of plaintiff's title* drilled on plaintiff's land and produced oil was entitled to reimbursement out of the oil "of all the expenses, ordinary and incidental, incurred in producing, transporting and preserving the same, and, if sold, the additional expense of sale;" saying:

"The Civil Code declares that 'the fruits produced by the thing belong to the owner though produced by

the work and labor of a third person, on the owner's reimbursing such person his expenses.' Article 501. Laurent in discussing Code Napoleon, Article 54, corresponding to Article 501, says:

" 'This is a principle of equity which will not permit the owner to enrich himself at the expense of another, *even though he be in bad faith*. This applies to all the expenses to which the possessor has been subjected'."

Again in *Voiers v. Atkins*, 113 La. 342, after discussing the rights and liabilities of the *mala fide* possessor, the court said:

"The claim for fruits and revenues is nothing more than a claim for indemnity for loss, and naturally may be defeated by proof that, instead of a loss, there has been a gain."

"The theory is well and fully expounded in the case of *Wilson v. Benjamin*, 26 La. Ann. 588, as follows:

" 'The claim is one in damages for the wanton detention of property; and, although the trespasser is not allowed to prefer a claim for the enhanced value of the soil attributable to his improvements, yet in the admeasurement of damages to which it is subject, the benefit derived from such improvement becomes an important element. The improvements were worth * * * fully the amount at which the detention of the property might be appraised.' "

There is nothing in the case of *Utah Light & Power Company v. United States*, 243 U. S. 402, to deny the application of the law of Louisiana, as was held by the Circuit Court of Appeals (Record 212). The question here involved does not concern the title of the United States nor its power of disposition.

The United States has sued as the *owner* of lands, for damages sustained through an unlawful extraction of oil by another. The federal court sitting in Louisiana is called upon to exercise its jurisdiction to award proper damages, and in the absence of legislation by Congress governing the case, it must needs apply the general principles of the Civil law, as recognized in the Louisiana statutes and jurisprudence, and which are entirely consonant with principles of natural equity.

Under the Constitution the Congress is given the power "to dispose of and make all needful rules and regulations" respecting the lands of the United States. This power is not questioned. On the contrary, it is the constitutional provision on which defendant depended in assuming that he had the right which the unrepealed statute gave him. But this right of Congress to administer the property of the United States within a state does not give it the right to change the fundamental jurisprudence of the state. And if this be not true, the fact that the United States owns land in the state does not within itself change the jurisprudence in the absence of action by Congress.

The public lands situate in the State of Louisiana were purchased by the United States. At the time of the purchase all the property within the present state, including all the lands were subject to the rules of law which obtained in that territory. The laws affecting real estate, the property rights inhering in real estate, were substantially as they are at the present time. As to the matter now under investigation there has been no change. If the United States had then or at any time since purchased land from a private individual there can be no doubt that the ownership of the Government would

have had as to ordinary matters of property right, exactly the same incidents as if it had continued in the individual. This of course would not extend to exemption from taxation and some other incidents arising from the character of our governments. To illustrate the principle we are undertaking to state—if the United States should purchase land the land would not on account of its acquisition by the Government be relieved of its servitudes. The adjacent land owner, for instance, would still have his right to a party wall.

Again, the acquisition by the Government of a tract of land would not deprive the adjoining land owner of the right to extract through his own land all the oil and gas under the Government's land if he could take it out before the Government or some other adjacent owner could reduce it to possession.

It is to be seriously doubted if these rules of local law could be changed by the United States. It would be seriously inconsistent with the theory of our government to impose upon a state rules of general jurisprudence that would be applicable to fractions of her territory and which would not be applicable to the body of her territory or to the people of the state generally. The general principles of the real estate law of a state is at least one thing which must be regarded as purely and definitely local, and it should not be lightly assumed that any court under any circumstances would apply those hazy "general principles of jurisprudence" in such a way as to make some owners of real estate have rights and obligations that are different from those of land owners generally.

But even if the United States has the right by virtue of the quoted provision or any other provision or principle of law

to give to land which it owns in Louisiana incidents which are different from those which inhere in all other lands within the state, this right has not been exercised. The legislative power is the only one which could have acted and it has not acted. It is not for the courts to express dissatisfaction with some of the principles of law that obtain in Louisiana, nor for the courts to announce that these principles are in conflict with general principles of jurisprudence, nor for courts to amend the laws of the state to consist with these assumed general principles. It is the misfortune of Louisiana that sometimes her laws are applied, or rights under her laws are adjudicated, by common law lawyers unfamiliar with, or not in sympathy with the great system of jurisprudence which constitutes the foundation of her laws. The rule of Louisiana law invoked by defendant is not in conflict with general principles of jurisprudence if principles are general principles when they govern three-fourths of the civilized people of the world.

(c) Nor is there anything in contention of the Government that the defendants should be penalized for their expense incurred in the production of the oil because of their infringement upon the policy of the Government to keep the oil in the ground as its property, for legislative disposition.

Not only did the Government *not* own the oil in the ground (Ohio Oil Company vs. Indiana, 177 U. S. 200) but as has been before pointed out, the tracts involved in these suits each are small areas surrounded by lands under private ownership. If no one had drilled the tracts, their oil would have been drained by reason of the legal drilling of such privately owned areas. Whatever the Government might succeed in recovering in these suits was saved to it by the acts of the

several defendants; for if they had not so drilled, these isolated tracts would, in the nearly nine years intervening between the withdrawal and suit, have been drained of the fluid minerals formerly underlying them. If the Government recover of the defendants the net profit made by said defendants in the extraction of oil, the Government will have made therefore a clear profit, while to refuse the allowance of the actual cost so incurred would be to penalize the defendants in an amount far exceeding any gain made by them in the operation of their mineral locations.

(d) Although the district court held the defendants in good faith, and accordingly that they were not to be penalized by confiscating their expenditures incurred in the production of the oil in controversy, yet the court fell into a peculiar error in following the master's recommendation on one particular feature of the case, as follows:

The property produced (Record, 166) in	
oil values.....	\$67,732.94
Cost of drilling operating, to be deducted..	34,067.13
<hr/>	
Or net.....	\$33,665.81

Royalties were paid to the co-defendants of the Gulf Refining Company of Louisiana in the sum of \$11,294.20; that is to say, they were delivered their royalty oil, proceeds of the sale of which amounted to that much. The Gulf Refining Company of Louisiana, therefore, received from the results of its operation, through its lease with the mineral locators, the difference between \$33,665.81 and \$11,294.20, or \$22,371.61. The master, however, recommended judgment against the Gulf Refining Company of Louisiana for the full

amount of the net results of the operation of the property, without deducting the oil accruing to its co-defendants as royalties, and then, through some process of ratiocination recommended a decree against the Gulf Refining Company of Louisiana and the royalty owners *in solido* with said company in the sum of \$11,294.20.

The result of this recommendation, affirmed by the decree of the District Court, was to condemn the Gulf Refining Company of Louisiana, not for the *remainder*, after subtracting the \$11,294.20, obtained by the royalty owners from the net result of the operations, but for the *sum* of the royalties and such net proceeds. *That Company, therefore, which had made a profit from the results of these operations of only \$22,371.61, is condemned to pay \$44,960.01. Clearly this was an error.*

For, after coming to the correct conclusions that the Government, no more than an individual, could be permitted to enrich itself at the expense of another, and that the proper measure of damage in event the location was invalid was the value of the oil less the cost of reduction to possession, a large part of the effect of such conclusion was destroyed by a decree condemning the defendant in a sum greatly in excess of the value of the oil at the well less the cost of extraction.

The test of the measure of damage in the case is, as has been before pointed out, *the loss to the Government*, consisting in the taking of the oil by the defendants. The oil taken from the underlying strata. It had to be reduced to possession to be of value, and the cost of such extraction is necessarily to be deducted from the price of the oil after extraction to ascertain its prior value in place; that is to say, its value at

the time and place where it may have been wrongfully,—though in good faith—severed from the plaintiff's land. The amount of such damage is ascertained by the master to be \$33,665.81, and yet he recommends a judgment for \$44,960.01, which the District Court approved.

We respectfully submit that this is error, and that the amount of the judgment against all defendants *in solido* cannot exceed \$33,665.81, the value of the oil produced, less the cost of extraction.

DILLARD P. EUBANK, et al., <i>versus</i> UNITED STATES OF AMERICA	}	No. 115
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The facts and the pleadings in this case are almost identical with those in the Mason case.

Location was made on March 31, 1910 (Record, page 5). Possession was taken on April 2, 1910, a well was commenced on April 24, 1910 (Record, page 33), and completed on June 17, 1910. It was testified to by defendant, and nowhere contradicted, that this location was also made after consultation with counsel, who advised that the location could legally be made (Record, No. 117, page 96).

Thus, both as respects the good faith of the location and the non-applicability of the withdrawal of July 2, 1910, the case is the same as that of Mason.

Special Agent Neal testified (Record, No. 117, page 61), that the total amount of oil produced from the property was of a value of \$4,806.43, of which the royalty owners' portion

was \$1,001.15, making a total retained by the Gulf Refining Company of Louisiana of oil of the value of \$3,805.28, and that the cost of drilling, equipping and operating such well for the production of such oil was \$13,628.94 (Record, No. 117, page 63), an amount considerably in excess of the value of the total amount of oil produced from the property.

And yet, notwithstanding good faith, and the adjudication that the Government could not recover for value of the oil, except subject to the cost of its extraction, the recommendation of the master, followed by the decree of the court, was for judgment against the Gulf Refining Company of Louisiana and its lessors *in solido* in the sum of \$1,001.15.

The remarks made above relative to the Mason case are here applicable. The government in no event is entitled to a money judgment, since the oil was produced from the property at a cost largely in excess of the value of all of the oil after production.

LYDIA H. McMULLEN, et al.,	}	No. 116
<i>versus</i>		
UNITED STATES OF AMERICA.		

This case differs little from the typical case, that of Mason.

The facts are that the location was made on April 2, 1910, (Record, page 7), at which time physical possession of the property was taken by fencing it in (Record, page 89); location for Well No. 1 being made during the same month of April, derrick being built and completed that month; immediately after which houses were built for the workmen and a

contract let for the drilling of a well (Record, page 90). The contract was made before the middle of June; all of the material to be furnished by the contractor (Record, page 90).

At that time the field was new; there were no roads in the vicinity of the land; the nearest wells were on the other side of the lake—in Texas (Record, page 91); and it was the 15th day of July, 1910, when actual drilling was begun on the well, page 94 (see, also, testimony of Griggs, page 104). The Woolf Drilling Company under its contract began to haul material for drilling the well prior to June 12th (Record, page 104); the condition of the roads being so bad that it took six days to haul the boiler the four miles between Oil City and the property in controversy (Record pp. 105-107). The Woolf Drilling Company was continuously at work from the time it began hauling material until the actual work of drilling was begun (Record, page 105).

Mr. Woolf testifies (Record, page 113) that during the interval of twenty or thirty days between the date of the contract and the drilling of the well his company was continuously at work, losing no time in beginning actual drilling.

Under these circumstances, the fact that the actual drilling of the well did not begin until after the second withdrawal order is of no moment; those things which were done prior to the second withdrawal order established defendants' good faith and the right to continue the work, as fully as if actual drilling had been begun, or the well had been completed, before such second withdrawal.

In *United States v. Grass Creek Oil & Gas Co.*, 236 Fed. 484, decided by the United States Circuit Court of Appeals for

the Eighth District, the land in controversy was withdrawn May 16, 1914. In July, 1913, the land had been surveyed and notices of location posted. On April 19, 1914, the locator entered into an oral contract for the lease of the land to an oil company, which took possession of the same and placed in charge a caretaker, who remained on the land as such until after May 16, 1914, the date of the withdrawal.

On May 4, 1914, the lessee ordered lumber and material to be sent to the nearest railroad station, placed workmen on the land the next day, and entered into a verbal contract with a contractor for the drilling of wells. The contractor did not ship the drilling tools until the period beginning May 19, 1914; beginning drilling operations on July 1, 1914, nearly two months after the withdrawal. The court held:

"In our opinion, when a citizen of the United States, in good faith, enters upon public land for the purpose of discovering oil or gas, takes possession of the land by placing a caretaker thereon while he is taking proper steps to obtain the material necessary for the work of constructing the camps, enters into contracts for drilling, acting as expeditiously as possible in erecting camps and preparing for drilling, spends money and enters into contracts whereby he becomes liable for sums of money to prosecute the work leading to the discovery of oil or gas, and as soon as possible, by the exercise of proper diligence, begins the work of drilling, and continues it diligently and expeditiously until oil is discovered in commercial quantities, he is within the protection of this proviso." (of the Pickett act of June 25, 1910).

Again, as said in

United States v. N. American Oil Consolidated,
242 Federal Reporter, 727;

"Diligent prosecution of work leading to discovery upon a mining claim depends so largely upon the physical conditions of the locality, the nature and situation of the region, its accessibility, the magnitude of the work, the difficulty of securing material and supplies, and the like, that each case must rest largely on its own facts and circumstances, and a decision in one is but little assistance in another. Since, however, the law does not require any unusual or extraordinary effort, but only that which is usual, ordinary, and reasonable under the circumstance, I am of the opinion that the oil company was in diligent prosecution of work leading to discovery at the date of the withdrawal, within the meaning of the Pickett Act. It was when overtaken by the withdrawal, and for months before had been, in occupation of each claim, engaged in work necessary and proper in order to effect a discovery thereon, with the then present bona fide purpose of completing such work with all reasonable expedition, and was at the date of the withdrawal doing all that could be reasonably and justly expected of it under the circumstances. The law does not require a vain or useless thing to be done, and therefore the oil company was not required by the law of diligence to have installed all of its machinery or commenced drilling before its supply of water was such that it could reasonably hope to successfully continue the work. Nor was it required to make any unusual or extraordinary effort to obtain water, but only such as was reasonable under the circumstances confronting it. Its possession, the work which it had done and was then doing, were such that it would have been protected by the courts from intrusion by private parties if the order had not been made. And that, I take it, is the true test in cases of this character."

The McMullen case is, therefore, in exactly the same situation as the other cases above referred to.

As respects the money judgment, this case is exactly like that of Eubank. Following the testimony of Special Agent Neal, the master found that (Record, Mason case, page 165), *the total value of the oil taken from the property was \$47,770.81, and that the cost of its extraction was \$54,916.70.* The defendants not having made any profit by reason of such drilling, it cannot be that the Government has lost anything and, of course, it is not entitled to any money judgment.

The master, however, recommended a judgment, which was confirmed by the final decree of the district court, against the locators for the *royalties* received by them from the operation of the property. This was, for the reason above discussed, plain error, which should be reversed.

W. H. MATTHEWS, et al.,
versus
 UNITED STATES OF AMERICA

} No. 114

This case presents the same questions relative to the main issues of the case.

Location was made and physical possession taken in April, 1910, a rig built and erected in May of that year, although actual drilling was not done until later.

Good faith in making the location is amply sustained, and nowhere contradicted (See Record, No. 117, page 92), and is supported by the concurrent findings of the Master and the District Judge.

HENRY HUNSICKER, et al.,	}	No. 104.
<i>versus</i>		
UNITED STATES OF AMERICA.		

This case presents the same issues again. The location was made (Record, page 5) on March 20, 1910, at which time physical possession was taken. Drilling began on the first well on April 10, 1910 (Record, No. 117, page 116), which well produced gas in commercial quantities, in July, 1910. The well, however, did not produce oil, but Well No. 2, drilled on the property subsequently completed, was a producer of oil.

The discovery of gas was sufficient to complete the location and the defendant in this case made his location and drilled under advice of counsel (Record, page 116); good faith of the defendants throughout being sustained by the concurrent finding of the master and the District Judge.

E. G. PALMER, et als.,	}	No. 111.
<i>versus</i>		
UNITED STATES OF AMERICA.		

The well in this case was drilled by the Humphrey Oil & Gas Company (Record, page 47), and was subsequently sold to and operated by the Pure Oil Operating Company (Record, page 77). The latter named company had nothing to do with the drilling of the well, acquiring it after completion. Under these circumstances, it certainly cannot be held liable for the value of the oil taken before its acquisition, or without allowance for the cost of operating the well. Nothing is claimed here for the cost of drilling the well, for the company which drilled it is not represented in this suit. The cost of operation

however, cannot, under any principles of equity, be thrown upon the defendant.

ARKANSAS NATURAL GAS CO.,
versus
 UNITED STATES OF AMERICA. } No. 112.

In this case, the circumstances are practically the same as in the McMullen case, actual drilling having been begun on July 16, 1910, resulting in the discovery of gas in commercial quantities.

B. R. NORVELL, et al.,
versus
 UNITED STATES OF AMERICA. } No. 113.

In this case, the location was made on December 22, 1908, (Record, page 5), oil having been produced in paying quantities long prior to the second withdrawal; the testimony of Special Agent Neal showing that oil was begun to be run from the property in March, 1909. The testimony shows that this location was made upon the advice of counsel (Record, page 64 *et seq.*) that the Roosevelt withdrawal order of December 15, 1908, was without any legal force or effect as a prohibition of inception of initiation of valid rights under mineral locations. The case therefore would be exactly the same as the Mason case, were it not for the further contention, made by the United States, that the location in question was in fraud of law and that it was made by defendants, Strouck, Weaver, Smilker, Millard, Norvell, Denman and Wildenthal, as dummy locators, for the use and benefit of a concealed party, namely the Gulf Refining Company of Louisiana.

The facts are, as shown by the record, that the locations were made by the defendants in question at the suggestion of the general manager of the Gulf Refining Company of Louisiana, with the understanding that the claim was to be the absolute property of the locators, but that it should be leased to the Gulf Company.

The record shows that the locations were made, the necessary acts performed, and lease then made to the Gulf Refining Company of Louisiana, under which lease that company drilled and made discovery and extracted oil from the land.

There is nothing to substantiate the Government's claim that the locators were dummy ones nor that their act was a fraud against the government, or that the locations were made to secure title for the Gulf Refining Company of Louisiana.

But if the records had shown that the locations were made for the use and benefit of the Gulf Refining Company of Louisiana, still there would be no fraud on the government, and the locations in question would stand exactly as in other valid locations—that is to say, if there had been no withdrawal order, they could have proceeded to patent had such been desired; and in the face of the withdrawal order, if it affects the right to mineral location, the drilling and extraction of oil was in good faith, as in the case of the other locations involved in these suits.

In *McKinley v. Wheeler*, 130 U. S. 630, the court held that a corporation was competent to locate a mining claim under the public land laws of the United States, in the same manner as an individual citizen.

"There may be some questions raised as to the extent of a claim which a corporation may be permitted to locate as an original discoverer. It may perhaps be treated as one person and entitled to locate only to the extent permitted to a single individual. That question, however, is not before us and does not call for an expression of opinion."

In *United States v. Trinidad Coal & Coking Co.*, 137 U. S. 161, the court held that a corporation was "an association of persons" under the language of the mining laws and entitled to make the same kind of location as any other association.

"The words, 'association of persons' are often, and not inaptly, employed to describe a corporation. An incorporated company is an association of individuals acting as a single person, and by their corporate name. As this court has said, 'private corporations are but associations of individuals united for some common purpose, * * * * *'"

Hence, it is settled that a corporation may make a location and in so doing act as an association under the law, under which an association of eight or more persons is entitled to locate one hundred and sixty acres of land.

In *United States v. Colorado Anthracite Co.*, 225 U. S. 225, the court held:

"There is no prohibition, express or implied, against any entry by a qualified person for the benefit of another person or association where he or it is fully qualified to make the entry in his or its own name, and is not seeking to evade the restrictions in respect of quantity."

*"A corporation is an association of persons within the meaning of the law, and therefore the company here which was a Colorado corporation, lawfully could have made the entry in question in its own name, unless it or some member of it had had the benefit of the coal land law, or was seeking, through this land and other like entries, to acquire coal land in excess of the quantity prescribed. In other words, the fact that the entry was made in the name of Stoiber for the benefit of the company does not, without more, establish that it was forbidden or fraudulent. There is no finding that the company or any member of it had the benefit of the law or was seeking to acquire more than this 160 acres. So, for aught that appears, there was no legal obstacle to the entry being made in the company's name, and the fact that it was not may have been due to matters not affecting its validity or integrity. * * * *"*

"Fraud is not presumed, and one who bases a right of defense upon it should allege and prove it."

These decisions definitely establish that the Gulf Refining Company of Louisiana, a domestic corporation, having over eight stockholders, was an "association of persons" capable of making the entry in question, and that the fact that the location was made in the name of other persons for the benefit of the company (if this fact be true) is to be taken in law as if the location had been made by the Gulf Refining Company of Louisiana, in which event it is a valid one; and if the court holds the land to have been withdrawn from such location, was initiated and perfected in good faith.

In all the above cases, therefore, the *second* withdrawal order cuts no figure; if the locations were without legal effect

so far as affording basis of title, it was because they were cut off by the *first* withdrawal order. The rights asserted by the defendants as relate to the admeasurement of damages against them are clearly sustained by law and they are entitled in each and every case, if the Government's claim of title is to prevail, to a judgment holding them liable only for the difference between the market value of the oil and gas reduced by them to possession and disposed of, and the cost of reducing such minerals to possession. That is the only question involved in these cases in so far as the measure of recovery is concerned; and we respectfully submit that the only proper judgment therein is one holding the defendants in damages solely for the *loss* actually accrued to the Government as a result of such operations.

This is particularly apposite to the peculiar conclusions of the master, concurred in by the District Judge, in the *Norrell* case, as in some of the other cases previously considered. Special Agent Neal testified that the total value of all of the oil produced from the property in litigation was \$14,561.81 (Record, page 100), the cost of extracting which from the disputed property (Record, page 102) was \$41,524.50, or a *total net loss incurred by defendants by reason of their operations, of \$26,962.69.*

The decree therefore, awarding the Government a money judgment, was manifest error, and should be reversed in any event.

IN CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court of Appeals is wrong and should be reversed; and that the cases should be remanded to the district court with in-

structions to dismiss the several bills. In any event, however, it is respectfully submitted that the defendants are entitled in each case to have deducted in the ascertainment of the damages due by them to the government, the entire cost of drilling, equipping and operating the wells which produced the oil, and to the other modifications of the decree of the district court pointed out in this brief.

Respectfully,

D. EDW. GREER
R. L. BATTS
HAMPDEN STORY
S. L. HEROLD
J. A. THIGPEN
E. P. LEE,

Solicitors for Appellants.

Nos. 117, 104, 111, 112, 113, 114, 115, and 116.

Supreme Court of the United States

OCTOBER TERM, 1922.

SAM W. MASON ET AL.

v.

UNITED STATES OF AMERICA.

HENRY HUNSICKER ET AL.

v.

UNITED STATES OF AMERICA.

E. G. PALMER ET AL.

v.

UNITED STATES OF AMERICA.

ARKANSAS NATURAL GAS COMPANY ET AL.

v.

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v.

UNITED STATES OF AMERICA.

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v.

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DILLARD P. EUBANK ET AL.

v.

UNITED STATES OF AMERICA.

LYDIA H. McMULLEN ET AL.

v.

UNITED STATES OF AMERICA.

APPEALS FROM THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.

Office Supreme Court, U

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SUPPLEMENTAL BRIEF FOR APPELLANTS.

Without again dealing separately with each individual case, we desire to restate our position as to the question generally involved in all the cases with respect to the measure of recovery should the Government be successful in maintaining its position that the mining locations are invalid.

I.

These lands are in Louisiana. The Common Law has never prevailed in that State. The basis of the law of Louisiana has always been the Civil Law. The principles of that law as found in the Civil Code and in the commentants of noted civilians have always been the substantive law of Louisiana, inhering in the titles to real estate as the most particular localizer of all subjects of state law.

This Court has consistently recognized that the question of rights of possessors in good or bad faith in respect to Louisiana land must be governed by the law of Louisiana.

99 U. S. 513, Jackson vs. V. S. & P. R. R. Co.;
131 U. S. 191, New Orleans vs. Christmas.

a.

Under the laws of Louisiana, the fruits or products of the land recovered cannot be restored to the plaintiff without reimbursing the defendant the expense he has incurred in their production.

Civil Code, Article 501.

The basis of the philosophy of this article is the maxim that no one should be permitted to enrich himself at the expense of another.

114 La. 359, Martel vs. Jennings-Heyward Oil
Syndicate.

Or, as expressed in Varlis vs. Athins, 113 La. 342, "the claim for fruits and revenues is nothing more than a claim for indemnity for loss and naturally may be defeated by proof that, instead of a loss, there has been a gain."

In both the cited cases, it was held under the principle of Article 501 that bad faith on the part of the defendant did not affect his right to reimbursement of necessary expenses, up to the value of the products realized.

In the case in 114 La. 359, the Court followed the doctrine of the corresponding Article (548) of the French Code as to which the noted Belgian Commentator Laurent says:

"This is a principle of equity which will not permit the owner to enrich himself at the expense of another even though he be in bad faith."

See also:

26 La. Ann. 588, Wilson vs. Benjamin;
135 La. 610, Cash vs. Gulf Refining Co. of La.,
and cases therein cited.

b.

As pointed out in our original brief, the small areas in controversy are isolated tracts in a producing oil field.

The suits were brought seven years after the original production of oil on each of the tracts.

Meanwhile the entire field was being operated; in-

cluding, of course, the lands in private ownership adjoining and surrounding the tracts in dispute.

This Court takes judicial notice of the fugitive and vagrant qualities of oil and that it may be drained from one tract by operations on adjacent lands.

155 U. S. 665 (670), *Brown vs. Spillman*;
177 U. S. 200, *Ohio Oil Co. vs. Indiana*.

Consequently it must be conceded that, had these fields in dispute not been drilled by defendants, their oil content would nevertheless have been extracted by the perfectly lawful operations of adjoining owners.

But for the drilling complained of, the oil would have been entirely lost to the Government.

The United States now seeks to recover that oil, or its value. In such suit, good or bad faith on the part of defendant cuts no figure under the law of Louisiana:

"He to whom property is restored must refund to the person who possessed it, *even in bad faith*, all he had necessarily expended for the preservation of the property."

Louisiana Civil Code, Article 2314.
(Italics ours.)

c.

But even in the ordinary case of compensation for improvements to land, the law of Louisiana has always recognized *degrees* of bad faith; has compensated the possessor in *legal* bad faith and has penalized only him who possessed "knavishly" or in "*moral* bad faith."

131 U. S. 191 (218) *New Orleans vs. Gaines*;
7 Mart. (U. S.) 112-113, *Donaldson vs. Hull*;
135 La. 610, *Cash vs. Gulf Refining Co. of La.*

This jurisprudence relates to offset for improvements to land as against damages and liability for fruits and revenues and flows from the equitable principle of the Civil Law which forbids that one should enrich himself at another's expense, though under the code the possessor in legal bad faith is not entitled to affirmative relief for his expenses. Though he have not the right to *recover* therefor, he may offset them against the benefits he has received.

But with respect to:

1. Liability for the products themselves of the thing detained;

2. Liability on restoration of property; specific codal provisions based upon settled principles of the Civil Law compel the allowance of necessary expenses, not exceeding the value of the products to be accounted for, because, under Article 501 the fruits belong to plaintiff only upon his reimbursement of the expenses of their production and because, under Article 2314, the true owner "must refund to the person who possessed it, even in bad faith, all he had necessarily expended for the preservation of the property."

II.

But if the case were to be governed by "principles of general preponderance" utterly unknown in the substantive law of Louisiana and never the subject of any action by Congress, the result must be the same.

a.

When the locations were made, there had been no adjudications sustaining the power of the Executive to withdraw lands from the operations of the statutory

provisions (R. S. 2319, 2329; Act of Feb. 11, 1897 [29 St. at L. 526]) declaring them "to be free and open to exploration and purchase" by any citizen.

The existence of this power which this Court five years later deduced, not from constitutional or statutory delegations of power, but from a long continued tacit acquiescence by Congress in an Executive practice, had not at the effective dates been sustained by any court.

Its existence was doubtful to the distinguished jurist who succeeded as President the author of the withdrawal order here in question; was denied by the District Court in the Midwest case, was not there passed upon by the Circuit Court of Appeals, and was vigorously denied by three of the Justices of this tribunal.

Members of the bar cannot now be censured because they entertained the opinion so vigorously expressed by the dissenting Justices in this Court, that such withdrawal was a usurpation of power and void; nor can the concurrent finding of the Master and the District Judge that all the defendants acted in good faith on the honest advice of competent lawyers be here questioned.

242 U. S. 351, *Adamson vs. Gilliland*.

The intimations of the Circuit Court of Appeals that the transaction was "colorable" rest on no evidence whatsoever and are mere insinuations.

Under such circumstances, A Court of Equity will not treat the defendants as wilful trespassers.

192 U. S. 542, *United States vs. St. Anthony Railway Co.*;

238 Fed. 593, *United States vs. McCutchen*;

232 Fed. 632, United States vs. Midway Northern Oil Co.;

117 Fed. 481, United States vs. Homestahe Mining Co.

b.

In this suit, the Government has invoked the aid of a Court of Equity. In so doing it submits itself to the application of the principles of equity jurisprudence and it becomes the duty of the Court to grant or withhold relief in respect of the pecuniary demand asserted except upon the terms which do equity and justice to the citizen.

10 Peters 596, Brent vs. Bank of Washington;
200 U. S. 321, United States vs. Detroit Lumber Co.;

197 U. S. 204, United States vs. Stinson;
232 Fed. 630, United States vs. Midway Northern Oil Co.; and cases therein cited.

As said by Judge Bledsoe in the similar case of United States vs. McCutchen, 238 Fed. 59:

“Plaintiff having come into a court of equity to right its wrongs, must not expect that court to award other than equitable relief—must content itself with compensatory damages and not expect to receive those of an exemplary character.”

Most respectfully we submit that the decree of the Circuit Court of Appeals entirely disregards fundamental principles in assuming a wilful trespass, in the face of the concurrent finding of the Master and the District Court (242 U. S. 357, Adamson vs. Gilliland), that defendants acted in good faith on the honest advice of competent counsel, and in awarding damages, not to make good a loss, but to penalize the de-

pendants in an accounting for the oil saved by their operations by compelling them to lose all they had expended in its saving and preservation.

Respectfully submitted,

R. L. BATTS,
HAMPDEN STORY,
S. L. HEROLD,
Of Counsel for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

SAM W. MASON ET AL.	}	No. 117.
v.		
UNITED STATES OF AMERICA.		

HENRY HUNSICKER ET AL.	}	No. 104.
v.		
UNITED STATES OF AMERICA.		

E. G. PALMER ET AL.	}	No. 111.
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ARKANSAS NATURAL GAS COMPANY ET AL.	}	No. 112.
v.		
UNITED STATES OF AMERICA.		

B. R. NORVELL ET AL.	}	No. 113.
v.		
UNITED STATES OF AMERICA.		

W. H. MATTHEWS ET AL.	}	No. 114.
v.		
UNITED STATES OF AMERICA.		

DILLARD P. EUBANK ET AL.	}	No. 115.
v.		
UNITED STATES OF AMERICA.		

LYDIA H. McMULLEN ET AL.	}	No. 116.
v.		
UNITED STATES OF AMERICA.		

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

These cases, eight in number, arose through bills in equity filed by the United States whereby was sought mainly a quieting of title to the various tracts involved and an accounting for the value of oil and gas taken therefrom.

The lands were withdrawn by an Executive order dated December 15, 1908. The defendants in each case claim under a mining location made *after* that date, asserting that the order did not have the effect of withdrawing the lands from appropriation under the mining laws. An additional contention was that even if the lands were not subject to mining location, the measure of recovery should be the value of the oil and gas less the cost of drilling and extraction. In other words, that the trespasses were not willful but innocent.

There was a reference to a master, who found that the lands were withdrawn from mining location but that the trespasses were not willful. (*Mason* record No. 117, pp. 153 to 169.) This was confirmed by the District Court and decrees were entered quieting title in the United States, enjoining defendants from further exploitation of the lands, appointing a receiver to conserve the property, and ordering the payment of the various sums found due as damages. (*Mason* record, 179-184; Opinion R. 169-173.)

Appeals were taken by defendants to the Circuit Court of Appeals and cross appeals by the Government, the latter as to the decree in respect to the

measure of damages. These resulted in affirmance as to all points except the measure of damages, as to which there was a reversal, the court holding the trespassers to be willful and not entitled to any deduction for drilling and operation expenses. (R. 213, Opinion 205-222; 273 Fed. 135, 142, 143.)

In support of the action of the Circuit Court of Appeals we submit these propositions:

I. The withdrawal order contemplated and had the effect of withdrawing the lands from mining location.

II. The damages were properly fixed upon the basis of willful trespasses.

III. The location involved in No. 113, *Norvell et al. v. United States*, is inherently bad.

IV. The United States, with respect to the measure of damages, is not bound by the State law of decisions.

ARGUMENT.

I.

The withdrawal order contemplated and had the effect of withdrawing the lands from mining location.

This order reads as follows (R. 132):

To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended the public lands in townships 15 to 23 north, and ranges 10 to 16 west, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation.

We say that by its very terms the initiation of any rights under *any law* was prohibited. Language could not be plainer. The phrase "other form of appropriation" means just that, and by analogy the rule is applicable here that prevails in the construction of statutes, namely, that where the language is plain and unambiguous, construction is not necessary or proper. *Caminetti v. United States*, 242 U. S. 470, 485.

Further, the contemporary construction of the order, contained in the letter of the same date from the Commissioner of the General Land Office to the register and receiver (R. 133, 134), establishes that mining location, as well as any other form of filing, entry or act attempting to create an inchoate right, was forbidden.

Moreover, the two communications addressed, *prior* to the withdrawal order, to the Secretary of the Interior by the Director of the Geological Survey, demonstrate that the conservation of the oil and gas values in the lands was the object sought to be obtained by the withdrawal. These communications were the basis for the order. (R. 135-138, 139-142.)

We do not propose to follow the appellants in the elaborate argument which they make in an endeavor to show that mining location could be made notwithstanding the withdrawal order. It does not impress us as sound. It did not prevail with the master, the District Court, or the Circuit Court of Appeals.

All the contentions now made by the appellants were considered by the Circuit Court of Appeals and

so effectively met and disposed of as to make extended argument unnecessary and uncalled for.

II.

The damages were properly fixed upon the basis of willful trespasses.

Appellants contend that they are not willful trespassers because before committing the acts of trespass they consulted with reputable lawyers who advised them that they might proceed to make mining locations upon the lands because the withdrawal order, in their view, did not prohibit appropriations under the mining laws, and, further, that the President had no authority to make such a withdrawal. (R. 86, 87.)

But it is undisputed that appellants knew of the withdrawal order and that they went upon the lands well aware that the Government authorities had declared that no claims could be initiated thereon. In the face of this warning, they can not claim to be innocent trespassers. *Goodson v. Stewart*, 46 Southern (Ala.) 239, 240; *Chilton v. Missouri Lbr. & Min. Co.*, 127 S. W. (Mo.) 941, 944.

Their acts were clearly willful and intentional, done with the purpose to ignore and defy the withdrawal order, and they knew that they were speculating upon the validity of that order. They did not mistake the facts but the law. A mistake of law does not lessen their liability nor make them innocent trespassers. *U. S. v. Murphy*, 32 Fed. 376, 383.

That a mistake of law is not a defense against a charge of willful trespass is also established by the

decisions in *Guffey v. Smith*, 237 U. S. 101, and *Benson Mining Co. v. Alta Min. Co.*, 145 U. S. 428. These cases we think controlling and decisive in the cases at bar.

In the *Guffey case* the defendants were held liable as willful trespassers from the time they became aware of the asserted rights of the plaintiffs under a prior lease. They apparently considered those asserted rights to be unavailing as against them, for in the suit they attacked several provisions of this prior lease as invalid. In other words, they speculated upon the validity of the plaintiff's rights, just as the appellants have speculated upon the validity of the withdrawal order.

In the *Benson Mining Company case*, that company located a mining claim previously located by the Alta Mining Company and for which that company had applied to the Land Department for a patent and had received a final certificate. The trespasser believed it had a right to relocate the land because the Alta Company had failed to do the annual assessment work thereon to enable it to hold the claim. It was held that as the issuance of the final certificate upon the mineral application vested equitable title in the Benson Company, it was not necessary for it to do annual assessment work thereafter. The Benson Company was held liable as a willful trespasser, notwithstanding its apparently honest belief that it could disregard the claim of the other company and extract ore from the land under its own subsequent mining location.

This court, referring to the finding of the trial court, said (p. 434):

It also found that the entries and trespasses upon the Alta mine were with knowledge of plaintiff's ownership thereof, and that the defendant at the time it received the ores had knowledge that they came from the Alta mine, and were the property of the plaintiff.

To the same effect is *Union Naval Stores Co. v. United States*, 240 U. S. 284, cited by the Circuit Court of Appeals. Cf. *Pine River Logging Co. v. United States*, 186 U. S. 279.

Durant Min. Co. v. Percy Consol Min. Co., 93 Fed. 166, and *United States v. Van Winkle*, 113 Fed. 903, are not contrary to the rule just set forth. They all proceed upon the theory that the mistake was one of fact.

Erroneous advice of counsel in the face of knowledge of an asserted adverse claim is not a defense in cases such as these. *Central Coal & Coke Co. v. Penny*, 173 Fed. 340; *Chilton v. Missouri Lbr. & Min. Co.*, *supra*.

The case of *United States v. Homestake Min. Co.*, 117 Fed. 481, cited by appellants, is not at all similar to the cases now before the court. There, the mining company consulted with the Secretary of the Interior with reference to cutting the timber involved, made a verbal agreement with that official as to the cutting and the price, and proceeded thereunder. Here, the appellants proceeded without consulting any official and in defiance of the order withdrawing the lands.

As the appellants were wilful trespassers, then the measure of damages is the value of the oil and gas in the pipe line when sold, *without* deduction for extraction. *Woodenware Co. v. United States*, 106 U. S. 432; *Guffey v. Smith*, *supra*.

But if innocent, the appellants would not be entitled to allowance of cost of *drilling*. *United States v. Midway Northern Oil Co.*, 232 Fed. 619, 633; *United States v. McCutchen*, 238 Fed. 575, 593, 594; *St. Clair v. Cash Gold Min. & Milling Co.*, 9 Colo. App. 235, 241, 47 Pac. 466, 468; *Hall v. Abraham*, 44 Oreg. 477, 481, 75 Pac. 882, 883.

IT IS, HOWEVER, TO BE BORNE IN MIND THAT NOT ALL OF THE DEFENDANTS SOUGHT THE ADVICE OF COUNSEL, AND ACCORDINGLY THE DEFENSE OF GOOD FAITH IS NOT OPEN TO THEM.

The following are the only defendants who sought advice of counsel:

In case No. 116 (District Court No. 1171), Sam W. Mason, one of four locators, testified that *he* consulted counsel, who advised him that the Roosevelt withdrawal order of December 15, 1908, did not forbid mineral locations, and, moreover, that the President was without power to issue the order. In the same case Cronin testified that on behalf of the lessee, Pure Oil Operating Company, he consulted lawyers who advised him that the locators could make a good lease. "I furnished them an abstract and asked if I had a reasonably good title, that is all that I inquired about." (Mason Rec., pp. 92, 93.)

In case No. 115 (District Court No. 1170) Eubanks testified that he was interested in the location with Gibbs (whose name alone appears on the location notice), and that before the location was made he, Eubanks, consulted counsel who advised him "we had a perfect right to make the mineral locations, that the land was open." (Mason Rec. No. 117, pp. 95-98.)

In case No. 114 (District Court No. 1168) Cronin, who acted not on behalf of the locators but of the lessee, Pure Oil Operating Company, stated that his testimony given in District Court case No. 1171 (No. 116 in this court), with respect to getting advice of counsel, was also applicable here. (Mason Rec. No. 117, p. 99.)

In case No. 104 (District Court No. 1156) Hunsicker, whose name appears on one of the two location notices involved in that suit, testified that before making the location he consulted a lawyer, who told him the President was without power to issue the Roosevelt withdrawal order of December 15, 1908. (Mason Rec. No. 117, pp. 115, 116.)

In case No. 113 (District Court No. 1167) D. Edward Greer, in answering interrogatories, testified to the legal advice given by him and Proctor to Markham, the manager of the Gulf Refining Company. (Mason Rec. No. 113, pp. 64, 78-80.)

This constitutes, we believe, an accurate statement of all the testimony on this subject. It will be seen that comparatively few of the various locators ever sought the advice of counsel.

THE COURT OF APPEALS IN EFFECT FOUND THAT THE VARIOUS LOCATORS WHO SOUGHT THE ADVICE OF COUNSEL DID SO COLORABLY FOR THE PURPOSE OF MAKING A DEFENSE IF EVER SUED. ITS FINDING OUGHT NOT TO BE DISTURBED.

In an action for malicious prosecution, where both malice and want of probable cause must be shown, the defendant is, of course, permitted to show that he sought the advice of counsel in order to prove the existence of probable cause. *Stewart v. Sonnenborn*, 98 U. S. 187. But testimony of this sort is unavailing if the proof shows that the advice was sought *colorably*. 18 L. R. A. (N. S.) 62.

The same reasoning exists in a suit of this sort. In this case the Court of Appeals in effect found that the locators did not seek legal advice in good faith, but for an ulterior purpose. Its finding ought not to be disturbed. *Lawson v. United States Mining Co.*, 207 U. S. 1.

III.

The location involved in No. 113, Norvell et al. v. United States, is inherently bad.

The location was fraudulent, of which the defendants not only had notice but all of them actively participated in the fraud. That the location was made for the benefit of the Gulf Refining Company is apparent. Markham, the general manager of the Gulf Refining Company, approached the president of the First National Bank of Beaumont, Tex., telling him that there was a tract of vacant Government land in Louisiana supposed to contain oil; that he, Markham, had been advised that the company could

locate only twenty acres; that his company was taking up oil lands in that vicinity; and that if the president of the bank and his friends would locate the land the company would lease or buy it. On the very day the location was filed the parties who participated in it, consisting of the officers and employees of the bank, executed a contract with the oil company for the operation of the land. Under this contract the so-called locators were to receive \$500 each in the event the land proved to be oil land. The locators had not seen the land, nor did they themselves take part in locating it, but they appointed an agent, one Bell, also an employee of the Gulf Refining Company, to make the location for them.

The placer mining laws, which were extended to lands containing petroleum by the act of February 11, 1897, 29 Stat. 526, provide that locations of not more than 160 acres each by two or more persons, or association of persons, having contiguous claims are permitted, there being a proviso to the effect that "no such location shall include more than 20 acres for each individual claimant." R. S., sec. 2331.

This limitation upon the number of acres one individual may locate necessarily means something, hence "any scheme or device entered into whereby one individual is to acquire more than that amount or proportion in area constitutes a fraud upon the law, and consequently a fraud upon the Government." *Nome and Sinook Co. v. Snyder*, 187 Fed. 385, 388.

In *Cook v. Klonos*, 164 Fed. 529, it was said by Circuit Judge Ross, delivering the opinion of the court (pp. 538, 539):

The mineral land laws of the United States are extremely liberal in the requirements under which possessory rights may be acquired. The few restrictions imposed are only intended to prevent the primary location and accumulation of large tracts of land by a few persons, and to encourage the exploration of the mineral resources of the public land by actual bona fide locators. The scheme of using the names of dummy locators in making the location of a mining claim for the purpose of securing a concealed interest in such claim appears to be contrary to the purpose of the statute; but when this scheme is used to secure an interest in a claim for a single individual, not only concealed but in excess of the limit of 20 acres, it is plainly in violation of the letter of the law, and when, as in this case, all the locators had knowledge of the concealed interest and were parties to the transaction, it renders the location void.

So, in *United States v. Brookshire Oil Co.*, 242 Fed. 718, it was said by District Judge Bean (p. 721):

This is a direct and positive limitation of the amount of mining ground any one claimant may appropriate individually or as a member of an association in any one claim, and he can not evade the law by the use of the names of his friends, relatives, or employees. Any device whereby any one person is to acquire more than 20, or an association more than 160, acres in area, by one discovery, constitutes a fraud upon the government and is without legal support and void.

Tested by this rule, it will be seen how far these appellants have fallen short of proving that they had a bona fide location. There can be no valid location without a discovery. And while the act of March 2, 1911, 36 Stat. 1015, recognizes that a mining claim may be sold prior to discovery, there is nothing in the act to validate a location otherwise invalid, the language of the act being that—

In no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any *qualified* persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases: *Provided, however,* That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.

It is by no means clear that this act authorizes the sale of more than 20 acres to a single individual, and in no event does it apply to an invalid location or to lands which at the time of the inception of development were withdrawn from mineral entry.

To say that a corporation or a single individual may acquire by transfer prior to discovery any number of mining claims, irrespective of the area

they contain, is to nullify that provision of the placer law which limits the claim to 20 acres to a single individual.

That all the locators, including the Gulf Refining Company, had knowledge of the fraudulent character of this location is plainly apparent from the record. It is therefore submitted that none of them can claim to be innocent trespassers.

IV.

The United States, with respect to the measure of damages, is not bound by the State law of decisions.

It is well settled that the United States is not bound by State statutes of limitation; and if the Government sues and a balance is found in favor of the defendant, no judgment can be rendered against the United States either for such balance or in any case for costs. *United States v. Thompson*, 98 U. S. 486.

It has also been held that the statute of a State requiring landowners to fence their lands does not apply to the United States; that the Federal Constitution has delegated to Congress without limitation the power to dispose of and make all needful rules and regulations concerning the public domain; and that the exercise of that power can not be restricted or embarrassed in any degree by State legislation. *Shannon v. United States*, 160 Fed. 870. See also, *Utah Power & Light Co. v. United States*, 243 U. S. 389.

Such being the law, no reason appears why the Government should be bound by such laws in fixing the measure of damages for trespasses on its public lands.

In *Woodenware Co. v. United States*, 106 U. S. 432, which lays down the rule governing the measure of

damages in cases of trespass, it is said that in the case of a willful trespass the trespasser is liable for the full value of the property taken without allowance for expenditures made by him. In that case the court said (p. 434):

There seems to be no doubt that in the case of a wilful trespass the rule as stated above is the law of damages both in England and in this country, though in some of the State courts the milder rule has been applied even in this class of cases. Such are some that are cited from Wisconsin.

It should be observed that the *Woodenware* case arose in Wisconsin, and this court referred to the milder rule in that State, which it did not see fit to follow but followed the rule prevailing generally in this country and in England.

Moreover, it is not entirely clear that the rule in Louisiana is what the appellants claim it to be. They rely upon the decision of this court in *Jackson v. Ludeling*, 99 U. S. 513, in which there is an extended discussion of the question of the measure of damages under the Civil Code of Louisiana. It was held in that case that parties in possession of a railroad under fraudulent foreclosure proceedings were entitled to be reimbursed for money spent in repairing the road and restoring it to its former condition. That was in accordance with the provisions of article 2314 of the code, which provides that—

He to whom property is restored must refund to the person who possessed it, even in bad faith, all that he had necessarily expended for the preservation of the property.

That rule has no application here, because the money spent in exploring for oil was not expended in the preservation of land.

We think that the appellants are peculiarly unfortunate in their citation of *Jackson v. Ludeling*, because in that case the court referred to a series of cases in which it was held by the Supreme Court of Louisiana that a person without title going into possession of the public lands of the United States can not set up a claim for improvements against the Government. In one of the cases the court said expressly:

We are of opinion that this Article of the Code is not applicable to materials used and labor expended in making settlements upon the national domain. No right can be acquired in relation to the public lands except under authority of Congress. (*Hollon v. Sapp*, 4 La. Ann. 519.)

The appellants challenge the action of the court in allowing interest from the date of the master's report, on the amount found due the United States. There was no error in this—*Jones v. United States*, decided February 27, 1922, 257 U. S. —.

The decrees, it is respectfully submitted, should be affirmed.

JAMES M. BECK,
Solicitor General.

WILLIAM D. RITER,
Assistant Attorney General.

H. L. UNDERWOOD,
Attorney.

Syllabus.

MASON ET AL. v. UNITED STATES.

EUBANK ET AL. v. UNITED STATES.

MACMULLEN ET AL. v. UNITED STATES.

MATTHEWS ET AL. v. UNITED STATES.

HUNSICKER ET AL. v. UNITED STATES.

NORVELL ET AL. v. UNITED STATES.

PALMER ET AL. v. UNITED STATES.

ARKANSAS NATURAL GAS COMPANY ET AL. v.
UNITED STATES.APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.Nos. 117, 115, 116, 114, 104, 113, 111, and 112. Argued November
17, 20, 1922.—Decided January 2, 1923.

1. The order of December 15, 1908, whereby, to conserve the public interests and in aid of contemplated legislation, specified public lands in Louisiana were "withdrawn from settlement and entry, or other form of appropriation," was within the power of the Executive. P. 553. *United States v. Midwest Oil Co.*, 236 U. S. 459.
2. The words "other form of appropriation" in this order include appropriations by mining locations. P. 553.
3. The *ejusdem generis* rule is a rule of construction resorted to only as an aid in ascertaining the meaning of doubtful words and phrases; it will not be so employed as to render general words in a statute meaningless by assigning them to a genus fully occupied by the specific terms employed. P. 553.
4. Defendants who entered upon parcels of the withdrawn lands under mining locations, and extracted oil, in "moral good faith," in the honest though mistaken belief that the order of withdrawal was void, were liable in damages under the laws of Louisiana, only for the value of the oil taken after deducting the cost of drilling.

- and equipping and operating the wells by means of which it was extracted. P. 555.
5. A specific finding of fact, made by a master after seeing and hearing the witnesses, and supported by evidence, will be accepted here. P. 556.
 6. Location of one hundred and sixty acres of oil land by an association of eight persons and lease of the tract on the same day to a corporation, in pursuance of an understanding had prior to the location, is not fraudulent under the federal mining laws. P. 557.
 7. A general rule of state statutory law for measuring damages in cases of conversion is binding on the federal courts sitting in the State, in suits in equity involving title to land there situate and seeking to restrain continuing trespasses upon it, in which damages for conversion of oil wrongfully extracted from the land are claimed as an incident to the equitable relief. P. 557.
 8. The enforcement of such a statute in an equity suit does not trammel or impair the equity jurisdiction of the federal courts. P. 558.
 9. Revised Statutes, § 721, providing that the laws of the States shall be rules of decision in trials at common law in the courts of the United States, is merely declarative of the rule that would exist in its absence, and does not by implication exclude such laws as rules of decision in equity suits. P. 558.
 10. Where some of a number of joint trespassers extract oil from land (in Louisiana) and pay royalties thereon to the others who share none of the cost of mining, all are liable to the land owner for the amount of the royalties without any deduction of expenses; but a decree against all for the royalties and against the operating trespassers for the net proceeds of the oil extracted, in so far as it allows a double recovery of the royalties, is erroneous. P. 559.
- 273 Fed. 135, 142, reversed.

APPEALS from decrees of the Circuit Court of Appeals, affirming with modifications decrees of the District Court in suits brought by the United States to confirm its title to various tracts of public land in Louisiana, to restrain continuing trespasses and to secure accountings for the value of oil and gas wrongfully extracted.

Mr. R. L. Batts and Mr. S. L. Herold, with whom Mr. D. Edward Greer, Mr. Hampden Story, Mr. J. A. Thigpen and Mr. E. P. Les were on the briefs, for appellants.

Mr. Assistant Attorney General Riter, with whom Mr. Solicitor General Beck and Mr. H. L. Underwood were on the brief, for the United States.

The withdrawal order contemplated and had the effect of withdrawing the lands from mining location.

The damages were properly fixed upon the basis of wilful trespasses.

It is undisputed that appellants knew of the withdrawal order and that they went upon the lands well aware that the Government authorities had declared that no claims could be initiated thereon. In the face of this warning, they cannot claim to be innocent trespassers. *Goodson v. Stewart*, 154 Ala. 660; *Chilton v. Missouri Lumber Co.*, 144 Mo. App. 315.

Their acts were clearly wilful and intentional, done with the purpose to ignore and defy the withdrawal order, and they knew that they were speculating upon the validity of that order. They did not mistake the facts but the law. A mistake of law does not lessen their liability nor make them innocent trespassers. *United States v. Murphy*, 32 Fed. 376.

That a mistake of law is not a defense against a charge of wilful trespass is also established by the decisions in *Guffey v. Smith*, 237 U. S. 101, and *Benson Mining Co. v. Alta Mining Co.*, 145 U. S. 428. These cases we think controlling and decisive in the cases at bar. To the same effect is *Union Naval Stores Co. v. United States*, 240 U. S. 284. Cf. *Pine River Logging Co. v. United States*, 186 U. S. 279.

Durant Mining Co. v. Percy Mining Co., 93 Fed. 166, and *United States v. Van Winkle*, 113 Fed. 903, proceed upon the theory that the mistake was one of fact.

Erroneous advice of counsel in the face of knowledge of an asserted adverse claim is not a defense in cases such as these. *Central Coal & Coke Co. v. Penny*, 173 Fed. 340; *Chilton v. Missouri Lumber Co.*, *supra*.

In *United States v. Homestake Mining Co.*, 117 Fed. 481, the mining company consulted with the Secretary of the Interior with reference to cutting the timber involved, made a verbal agreement with that official as to the cutting and the price, and proceeded thereunder. Here, the appellants proceeded without consulting any official and in defiance of the order withdrawing the lands.

As the appellants were wilful trespassers, the measure of damages is the value of the oil and gas in the pipe line when sold, without deduction for extraction. *Woodenware Co. v. United States*, 106 U. S. 432; *Guffey v. Smith*, *supra*.

But if innocent, the appellants would not be entitled to allowance of cost of drilling. *United States v. Midway Northern Oil Co.*, 232 Fed. 619; *United States v. McCutchen*, 238 Fed. 575; *St. Clair v. Cash Gold Mining Co.*, 9 Colo. App. 235; *Hall v. Abraham*, 44 Oreg. 477.

It is, however, to be borne in mind that not all of the defendants sought the advice of counsel, and accordingly the defense of good faith is not open to them.

In an action for malicious prosecution, where both malice and want of probable cause must be shown, the defendant is, of course, permitted to show that he sought the advice of counsel in order to prove the existence of probable cause. *Stewart v. Sonneborn*, 98 U. S. 187. But testimony of this sort is unavailing if the proof shows that the advice was sought colorably. 18 L. R. A. (N. S.) 62.

The same reasoning applies in a suit of this sort. In this case the Court of Appeals in effect found that the locators did not seek legal advice in good faith, but for an ulterior purpose. Its finding ought not to be disturbed. *Lawson v. United States Mining Co.*, 207 U. S. 1.

The location involved in the Norvell case is inherently bad. The location was fraudulent, of which the defendants not only had notice, but all of them actively participated in the fraud. That the location was made for the

benefit of the Gulf Refining Company is apparent. The general manager of the Gulf Refining Company approached the president of the First National Bank, telling him that there was a tract of vacant government land in Louisiana supposed to contain oil; that he had been advised that the company could locate only twenty acres; that his company was taking up oil lands in that vicinity; and that if the president of the bank and his friends would locate the land the company would lease or buy it. On the very day the location was filed the parties who participated in it, consisting of the officers and employees of the bank, executed a contract with the oil company for the operation of the land. Under this contract the so-called locators were to receive \$500 each in the event the land proved to be oil land. The locators had not seen the land, nor did they themselves take part in locating it, but they appointed an agent, also an employee of the Gulf Refining Company, to make the location for them.

The placer mining laws, which were extended to lands containing petroleum by the Act of February 11, 1897, 29 Stat. 526, provide that locations of not more than 160 acres each by two or more persons, or association of persons, having contiguous claims, are permitted, there being a proviso to the effect that "no such location shall include more than 20 acres for each individual claimant." Rev. Stat. § 2331.

This limitation upon the number of acres one individual may locate necessarily means something, hence "any scheme or device entered into whereby one individual is to acquire more than that amount or proportion in area constitutes a fraud upon the law, and consequently a fraud upon the Government." *Name & Sinoock Co. v. Snyder*, 187 Fed. 385; *Cook v. Klonos*, 164 Fed. 529; *United States v. Brookshire Oil Co.*, 242 Fed. 718.

There can be no valid location without a discovery. And while the Act of March 2, 1911, 36 Stat. 1015, recognizes that a mining claim may be sold prior to discovery, there is nothing in the act to validate a location otherwise invalid.

It is by no means clear that this act authorizes the sale of more than 20 acres to a single individual, and in no event does it apply to an invalid location or to lands which at the time of the inception of development were withdrawn from mineral entry.

To say that a corporation or a single individual may acquire by transfer prior to discovery any number of mining claims, irrespective of the area they contain, is to nullify that provision of the placer law which limits the claim to 20 acres to a single individual.

That all the locators, including the Gulf Refining Company, had knowledge of the fraudulent character of this location is plainly apparent from the record. It is therefore submitted that none of them can claim to be innocent trespassers.

The United States, with respect to the measure of damages, is not bound by the state law or decisions.

It is well settled that the United States is not bound by state statutes of limitation; and if the Government sues and a balance is found in favor of the defendant, no judgment can be rendered against the United States either for such balance or in any case for costs. *United States v. Thompson*, 98 U. S. 486.

It has also been held that the statute of a State requiring landowners to fence their lands does not apply to the United States; that the Federal Constitution has delegated to Congress without limitation the power to dispose of and make all needful rules and regulations concerning the public domain; and that the exercise of that power cannot be restricted or embarrassed in any degree by state legislation. *Shannon v. United States*, 160 Fed.

870. See also, *Utah Power & Light Co. v. United States*, 243 U. S. 389.

Such being the law, no reason appears why the Government should be bound by such laws in fixing the measure of damages for trespasses on its public lands.

In *Woodenware Co. v. United States*, 106 U. S. 432, it is said that in the case of a wilful trespass the trespasser is liable for the full value of the property taken without allowance for expenditures made by him. The *Woodenware Case* arose in Wisconsin, and this Court referred to the milder rule in that State, which it did not see fit to follow, but followed the rule prevailing generally in this country and in England. Moreover, it is not entirely clear that the rule in Louisiana is what the appellants claim it to be. They rely upon the decision of this Court in *Jackson v. Ludeling*, 99 U. S. 513, in which it was held that parties in possession of a railroad under fraudulent foreclosure proceedings were entitled to be reimbursed for money spent in repairing the road and restoring it to its former condition under Art. 2314 of the Code.

That rule has no application here, because the money spent in exploring for oil was not expended in the preservation of the land.

In *Jackson v. Ludeling*, *supra*, the Court referred to a series of cases in which it was held by the Supreme Court of Louisiana that a person without title going into possession of the public lands of the United States cannot set up a claim for improvements against the Government. See *Hollon v. Sapp*, 4 La. Ann. 519.

There was no error in allowing interest from the date of the master's report. *Jones v. United States*, 258 U. S. 40.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These cases, involving the same questions, were consolidated for trial in the District Court as well as for hear-

ing on appeal in the Circuit Court of Appeals and argued together here.

The United States, as plaintiff, brought separate suits in equity in the United States District Court for the Western District of Louisiana against the several groups of appellants (defendants in the bills) to have its title to various parcels of land confirmed, possession thereof restored, defendants enjoined from setting up claims thereto, extracting oil or other minerals therefrom, or going upon or in any manner using the same. There was in addition a prayer for an accounting in respect of the oil and gas removed from the lands by the defendants. The cases were referred to a master, and upon his report the District Court entered decrees in favor of the plaintiff in all the cases, from which appeals were taken by defendants and cross appeals by plaintiff to the Circuit Court of Appeals. That court affirmed the decrees generally but reversed the trial court in so far as it had allowed drilling and operating costs as a credit against the value of the oil extracted and converted by the defendants respectively. 273 Fed. 135, 142. The cases come here by appeal.

The lands in question were public lands of the United States and the only claim thereto asserted by the defendants was based upon locations purporting to have been made under the mining laws. The lands were withdrawn on December 15, 1908, by an executive order which reads:

"To conserve the public interests, and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims, withdrawn from settlement and entry, or other form of appropriation."

After the promulgation of this order, at various times, mining locations were made upon the several parcels of

land by the respective groups of defendants or persons in privity with them. These locations, it will be assumed for the purposes of the case, complied with the requirements of the laws relating to the acquisition of mining rights. Before the locations were made the question had been submitted by some of the defendants to counsel learned in the law who advised that the President was without authority to make the withdrawal and that the order, in any event, did not include appropriations of lands valuable for their deposits of mineral substances. All the locations, it is claimed, were made by the defendants in the honest belief that the order not only was made without authority but that it did not purport to preclude appropriations under the mining laws.

Whatever legitimate doubts existed at the time of the locations respecting the validity of the executive order, were resolved by the subsequent decision of this Court in *United States v. Midwest Oil Co.*, 236 U. S. 459, where it was held that a similar order, issued in 1909, was within the power of the executive. Upon the authority of that case the order here in question must be held valid.

Passing this, it is insisted that the order does not apply to the cases here presented. The point sought to be made rests upon the rule of statutory construction that words may be so associated as to qualify the meaning which they would have standing apart. Here, it is said, the general words of the order "or other form of appropriation" must be read in connection with the specific words "settlement and entry" immediately preceding, and that so read they must be restricted to appropriations of a similar kind with those specifically enumerated. The words "settlement and entry", it is said, apply only to the act of settling upon the soil and making entry at a land office, as, for example, under the homestead laws; that mining lands are acquired, not by settlement or entry, but by location and development; and that this

process is not covered by the words "other form of appropriation," limited, as they must be, by the associated specific words, to those forms of appropriation which are akin to a settlement and entry. The rule is one well established and frequently invoked, but it is, after all, a rule of *construction*, to be resorted to only as an aid to the ascertainment of the meaning of doubtful words and phrases, and not to control or limit their meaning contrary to the true intent. It cannot be employed to render general words meaningless, since that would be to disregard the primary rules, that effect should be given to every part of a statute, if legitimately possible, and that the words of a statute or other document are to be taken according to their natural meaning. Here the supposed specific words are sufficiently comprehensive to exhaust the genus and leave nothing essentially similar upon which the general words may operate. See *United States v. Mescall*, 215 U. S. 26; *Danciger v. Cooley*, 248 U. S. 319, 326; *Higler v. People*, 44 Mich. 299; *United States v. First National Bank*, 190 Fed. 336, 344. If the appropriation of mineral lands by location and development be not akin to settlement and entry, what other form of appropriation can be so characterized? None has been suggested and we can think of none. A purchase of land or an appropriation for railroad uses or rights of way, if not actually involving settlement and entry, is no more akin to that method than an appropriation for mining purposes. Reasons which, under the rule, would justify the exclusion of one from the operation of the general words would equally justify the exclusion of all. It would therefore result, there being nothing *ejusdem generis*, that the application of the rule contended for would nullify the general words altogether. Moreover, the circumstances leading up to and accompanying the issuance of the order demonstrate conclusively that its main, if not its only, purpose was to preserve from private appro-

priation the oil and gas which the lands were thought to contain pending investigation and congressional action, and this purpose would have been subverted by appropriations of the nature here involved quite as much as by other forms. We conclude, therefore, that the mining locations here relied upon fell clearly within the withdrawal order and consequently were prohibited by it.

The trial court so decided, but, following the report of the master, held that these locations were made in moral good faith, and that under the laws of Louisiana, where the lands are situated, the defendants were liable only for the value of the oil after deducting therefrom the cost of drilling, equipping and operating the wells, through and by means of which the oil was extracted. It was to reverse this latter holding that the cross appeals were prosecuted. The Circuit Court of Appeals reversed the District Court in this particular upon the ground that the defendants' mistake, if any, was one of law, and constituted no excuse, and that the Louisiana law could have no application since the suit was one in equity, to be governed by general principles and not by local laws or rules of decision.

Whether the defendants were innocent trespassers within the principles of the common law we find it unnecessary to determine. That the measure of damages applied by the District Court was in consonance with the statute law of Louisiana as interpreted by the highest court of that State is clear. The Louisiana Civil Code (Article 501), in terms provides that the "fruits produced by the thing belong to its owner, although they may have been produced by the work and labor of the third person . . . on the owner's reimbursing such person his expenses." This provision is taken substantially from Article 548 of the Code Napoleon, respecting which, Laurent, a distinguished commentator, says: "This is a principle of equity which will not permit the

owner to enrich himself at the expense of another, even though he be in bad faith. This applies to all the expenses to which the possessor has been subjected." *Martel v. Jennings-Heywood Oil Syndicate*, 114 La. 351, 359. The decisions of the Supreme Court of Louisiana have settled the rule that under the provisions of this article of the Louisiana Civil Code, in awarding damages to the owner of property from which oil has been extracted the cost of production must be first deducted from the value of the oil produced, even though the defendant went into possession in technical bad faith but in moral good faith. *Cooke v. Gulf Refining Co.*, 135 La. 609, 618, and cases cited.

The defendants here, it is true, took possession of the lands in violation of the withdrawal order, but they did so in the honest, though mistaken, belief that the order was wholly without authority. Some of them had legal advice from competent counsel to that effect. It is common knowledge that the validity of the withdrawal order in question, as well as the later order of 1909, was in grave doubt until the decision of this Court in *United States v. Midwest Oil Co.*, *supra*. Not only was a substantial opinion to be found among members of the profession that the order was invalid, but the decision here was by a divided court. In view of these circumstances, we think it fair to conclude that the mining locations by defendants and the occupation and use of the lands thereunder were in moral good faith, within the meaning of the Louisiana Code and decisions. *New Orleans v. Gaines*, 131 U. S. 191, 218. The Circuit Court of Appeals suggested doubts respecting the honesty of defendants' motives in seeking or in acting upon advice of counsel; but we cannot ignore the finding of the master explicitly to the effect that the locators proceeded in "moral good faith." His finding was made after hearing and seeing the witnesses and, having support in the evidence, will be accepted here. See *Adamson v. Gilliland*, 242 U. S. 350, 353.

The Norvell case is sought to be distinguished from the others. It appears that the location covered one hundred and sixty acres and was made by an association of eight persons. The lands were leased to the Gulf Refining Company upon the same day in pursuance of an understanding had prior to the location. But there is nothing in the federal mining laws which renders such a transaction fraudulent, and a careful reading of the evidence discloses nothing in the circumstances which would make the Louisiana statute as to the measure of damages inapplicable.

Was the lower court right in its conclusion that the Louisiana law was not applicable in an equity suit?

Subject to certain exceptions, the statutes of a State are binding upon the federal courts sitting within the State, as they are upon the state courts. One of the exceptions is that these statutes may not be permitted to enlarge or diminish the federal equity jurisdiction. *Mississippi Mills v. Cohn*, 150 U. S. 202. That jurisdiction is conferred by the Constitution and laws of the United States and must be the same in all the States. *Neves v. Scott*, 13 How. 268. But while the power of the courts of the United States to entertain suits in equity and to decide them cannot be abridged by state legislation, the rights involved therein may be the proper subject of such legislation. See *Missouri, Kansas & Texas Trust Co. v. Krumseig*, 172 U. S. 351, 358. In *Brine v. Insurance Co.*, 96 U. S. 627, 639, this Court said:

"We are not insensible to the fact that the industry of counsel has been rewarded by finding cases even in this court in which the proposition that the rules of practice of the Federal courts in suits in equity cannot be controlled by the laws of the States, is expressed in terms so emphatic and so general as to seem to justify the inference here urged upon us. But we do not find that it has been decided in any case that this principle has been carried so far as to deny to a party in those courts substantial rights

conferred by the statute of a State, or to add to or take from a contract that which is made a part of it by the law of the State, except where the law impairs the obligation of a contract previously made."

See, also, *Independent District of Pella v. Beard*, 83 Fed. 5, 13, where it is said:

"It is undoubtedly true that the United States courts sitting as courts of equity have a freedom of action in this respect which they do not possess as courts of common law, and that, as a general proposition, the equity jurisdiction of the federal courts cannot be limited or restrained by a state. *Green v. Creighton*, 23 How. 90; *Payne v. Hook*, 7 Wall. 430; *Ridings v. Johnson*, 128 U. S. 212; *Mississippi Mills v. Cohn*, 150 U. S. 202. But these decisions relate to the practice, the impairing of jurisdiction, rather than to the determination of the rights of parties after jurisdiction has been acquired."

Here, while the suit is one in equity, the statute and decisions relied upon have nothing to do with the general principles of equity or with the federal equity jurisdiction, but simply establish a measure of damages applicable alike to actions at law and suits in equity. The case presented by the bills is primarily one involving title to land and seeking an injunction against continuing trespasses. The conversion of the oil, for which damages are sought, is incidental and dependent. The entire cause of action is therefore, local (*Ellenwood v. Marietta Chair Co.*, 158 U. S. 105), and the matter of damages within the controlling scope of state legislation. See *Mullins Lumber Co. v. Williamson & Brown Land & Lumber Co.*, 255 Fed. 645, 647. The enforcement of such a statute in an equity suit in no manner trammels or impairs the equity jurisdiction of the national courts.

It was urged upon the argument that § 721 of the Revised Statutes, which provides that the laws of the several States shall be regarded as rules of decision in trials at common law in the courts of the United States, by impli-

cation excludes such laws as rules of decision in equity suits. The statute, however, is merely declarative of the rule which would exist in the absence of the statute. *Bank of Hamilton v. Lessee of Ambrose Dudley, Jr.*, 2 Pet. 492, 525; *Bergman v. Bly*, 66 Fed. 40, 43. And it is not to be narrowed because of an affirmative legislative recognition in terms less broad than the rule. The rule that an affirmative statute, without a negative express or implied, does not take away the common law (Potter's *Dwarris*, 68; *Sedgwick Statutory Construction*, 29, 30) affords an analogy. See *Bailey v. Commonwealth*, 11 Bush. (Ky.) 688, 691; *Johnston v. Straus*, 26 Fed. 57, 69.

There are numerous cases, both in this Court and in the lower federal courts, where the rule has been applied in suits in equity, and while § 721 was not mentioned, it is scarcely possible that it was overlooked. See, for example, *Jackson v. Ludeling*, 99 U. S. 513, 519, a suit in equity, where this Court held that a law of Louisiana based upon the civil law, relating to the measure of damages, was controlling. The law there involved was Article 2314 of the Civil Code, which provides:

"He to whom property is restored must refund to the person who possessed it, even in bad faith, all he had necessarily expended for the preservation of the property."

The general purpose and principle of that provision and of the provision which is relied upon in the instant case are the same.

The defendants in some of the cases enumerated in the title complain of the action of the master and the District Court in charging against them various sums paid to co-defendants as royalties, notwithstanding the fact that the cost of drilling, equipping and operating the wells exceeded the value of the oil extracted, or that the exaction was in addition to the value after deducting such cost. These royalties arose from and were paid out of proceeds of the oil; but this oil belonged to the plaintiff as owner of the property from which it had been taken. The de-

fendants who received the royalties were obviously not entitled to retain them, and having incurred no expense in connection with the mining operations, were liable for the entire amount and the defendants who paid the royalties were jointly liable as co-wrongdoers. A joint judgment against all was therefore proper. In the Mason case, however, the net value of the oil extracted exceeded in amount the royalties paid. The gross value was \$67,732.94, the drilling and operating cost was \$34,067.13, which, being deducted, left the net value of \$33,665.81. Royalties were paid by the producer, the Gulf Refining Company, to its co-defendants, amounting to \$11,294.20. The master found and the District Court held that the Gulf Refining Company was liable for the \$33,665.81, and that the recipients of the royalties and the Gulf Refining Company were liable *in solido* for the additional sum of \$11,294.20, making the total judgment \$44,960.01. We think this was erroneous. For reasons already stated, plaintiff was entitled to recover the amount of the royalties without deduction in any event, but it was not entitled to recover them twice and this is clearly the effect of the decree, the amount of which should be reduced to \$33,665.81.

The District Court reserved the question of the adjustment of equities among the several defendants in respect of the royalties and no doubt an opportunity will be afforded by that court for its presentation and consideration. As to the rights of the respective defendants in that matter, however, we express no opinion.

The decrees of the Circuit Court of Appeals are reversed and those of the District Court are affirmed in all the cases except that the decree in the Mason case is modified by reducing the amount to \$33,665.81—\$22,371.61 against the Gulf Refining Company and \$11,294.20 against that defendant and the respective royalty recipients in solido—and as so modified, it is affirmed.